United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

OCTOBER TERM, 1901.

No. 1119.

104

SARAH LOUGHRAN, INTERVENER, APPELLANT,

vs.

MARY C. LEMMON, COMPLAINANT, AND FRANCES M. RICH.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED AUGUST 8, 1901.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

SARAH LOUGHRAN, Intervener, Appellant,
vs.
MARY C. LEMMON ET. AL. } No. 1119.

a Supreme Court of the District of Columbia.

MARY C. LEMMON
vs.
FRANCES M. RICH and JOHN S. RICH, Her Husband; Leopold Stargardter, Executor; Frederick R. Sparks and Stephen C. Hanson, Trustees; James M. Parker, George S. Parker, and James H. Taylor and John Ridout, Collectors; Henry P. Parker. } In Equity. No. 18924.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill. Filed Dec.* 30, 1897.

In the Supreme Court of the District of Columbia.

MARY C. LEMMON
vs.
FRANCES M. RICH and JOHN S. RICH, Her Husband; Leopold Stargardter, Executor; Frederick R. Sparks and Stephen C. Hanson, Trustees; James M. Parker, George S. Parker, and James H. Taylor and John Ridout, Collectors; Henry P. Parker. } No. 18924. Equity.

The bill of complaint of Mary C. Lemmon respectfully shows as follows:

1. That she is a citizen of the United States and a resident of the District of Columbia, and brings this suit in her own right, as one of the devisees under the last will and testament of Frances Marion Loughran, deceased, as hereinafter set forth.

2. The defendants are also citizens of the United States and all reside in the District of Columbia, except James M. Parker, who resides at Hampton, in the State of Virginia. The said Frances M. Rich is sued as a devisee under the said will and as heir-at-law of said Frances Marion Loughran, deceased; John S. Rich is sued as the husband of the said Frances M. Rich; the defendant Leopold Stargardter is sued as the executor named by the said will; the defendants Frederick R. Sparks and Stephen C. Hanson are sued as the trustees named in a certain deed of trust given by the said Frances Marion Loughran and Joseph F. Loughran upon the property hereinafter described, and the defendants James M. Parker,
Henry P. Parker, and George S. Parker are sued as heirs-at-
2 law and next of kin of Thomas J. Parker, deceased, the beneficiary under said deed of trust, and the defendants James H. Taylor and John Ridout are sued as collectors of the estate of Frances Marion Loughran, deceased, one of the heirs-at-law and next of kin of said Thomas J. Parker, deceased.

3. That on or about the 22nd day of September, 1882, one Thomas J. Parker, by deed duly recorded in Liber 1016, folio 43, of the land records of the District of Columbia, which said record is hereby referred to and leave to read same at the trial of this cause is hereby prayed, conveyed to Joseph F. Loughran and Frances Marion Loughran, their heirs and assigns, and to the survivor of them, his heirs and assigns, the following-described property, in the city of Washington, to wit: All of lot numbered thirty-six (36), in the subdivision of square numbered one hundred and ninety-four (194) made by Columbian college, James Miller, and Joseph Abbott, and recorded in Liber C. H. B., folio 101, of the records of the office of the surveyor of the District of Columbia, the said lot having a frontage of twenty-three (23) feet and nine (9) inches on Fifteenth street northwest and running back of the same width one hundred feet.

4. That on or about the 24th day of October, 1882, the said Joseph F. Loughran and Frances Marion Loughran, by deed duly recorded in Liber 1016, folio 376, of the land records of the District of Columbia, which said record is hereby referred to and leave to read same at the trial of this cause is hereby prayed, conveyed the said property to Frederick R. Sparks and Stephen C. Hanson, trustees, in trust to secure to Thomas J. Parker the payment of a certain promissory note therein described for $1,500, bearing even date with the said deed of trust and made payable to the order of the said Thomas J. Parker in five years, without interest. The complainant is informed, and therefore avers, that the sum of six hundred dollars has been paid on account of the said note, and that the balance due upon the said note and secured by the said deed of trust at this time
is only nine hundred dollars; that the said Thomas J.
3 Parker departed this life on or about the 15th day of April,
1897, intestate, leaving him surviving as next of kin the said Frances Marion Loughran, his sister, and the said James M. Parker, a brother, and the said Henry P. Parker and George S. Parker, the children of a deceased brother.

5. That the said Joseph F. Loughran departed this life on or about the 17th day of March, 1897, and the title to the said property thereupon vested in said Frances Marion Loughran.

6. That the said Frances Marion Loughran departed this life on or about the ninth day of November, 1897, leaving a last will and testament, bearing date on the sixth day of November, 1897, and duly filed in the office of the register of wills of the District of Columbia—a copy of which is hereto attached, marked "Exhibit A"—by which she directs her executor, the said Leopold Stargardter, to sell the said real estate and to divide equally the proceeds thereof between the said defendant, Frances M. Rich, and the said complainant, Mary C. Lemmon; that your complainant was in possession of the said property on the 9th day of November, 1897, the date of the death of the said Frances Marion Loughran, and has continued in possession of the same up to the present time.

7. That your complainant has requested the said Leopold Stargardter, as executor of the will of said Frances Marion Loughran, to proceed to sell the real estate as directed by the said will, but he has refused and still refuses to do so.

8. That the aforesaid deed of trust is considerably overdue, and your complainant is informed and believes that the property may be sold under said trust at any time.

9. Your complainant believes, and therefore avers, that in consideration of the premises it would be to the advantage and benefit of all parties interested to have said property sold, under the order and direction of this court, by a trustee or trustees to be
4 appointed by the court, and distribution and partition of the proceeds of sale made pursuant to the directions of said will of Frances Marion Loughran, deceased.

Your complainant therefore prays:

1. That the said real estate be decreed to be sold and the proceeds thereof distributed under the order and direction of this court, and that a trustee or trustees be appointed by this court to make such sale.

2. That the usual writ of subpœna issue to the defendants, requiring them to appear and make answer to the exigencies of this bill.

3. And that your complainant may have such other further relief as the nature of the case may require or to the court may seem meet.

The defendants to this bill are Francis M. Rich, John S. Rich, Leopold Stargardter, Frederick R. Sparks, Stephen C. Hanson, James M. Parker, George S. Parker, James H. Taylor, John Ridout, Henry P. Parker.

MARY C. LEMMON.

TAYLOR & PAYNE,
Solicitors for Complainant.

DISTRICT OF COLUMBIA, }
City of Washington, } *ss:*

Mary C. Lemmon, being duly sworn, on oath says that she
5 is the complainant named in the foregoing bill of complaint by her subscribed; that she has read the said bill of complaint and knows the contents thereof, and that the matter- and things therein set forth as of personal knowledge are true, and that those stated upon information and belief she verily believes to be true.

MARY C. LEMMON.

Subscribed and sworn to before me this 30 day of December, A. D. 1897.

ALFRED B. BRIGGS,
[SEAL.] *Notary Public.*

EXHIBIT "A."

In the name of God, amen!

I, Frances Marion Loughran, of the city of Washington, District of Columbia, being of sound and disposing mind, memory and understanding, do make and publish this my last will and testament in manner and form following, that is to say:

First. It is my will and I do order that all my just debts and funeral expenses be duly paid and satisfied as soon as conveniently can be after my decease.

Item. I give and bequeath to my beloved cousin, Mary C. Lemmon, the sum of two hundred (200) dollars, to be paid to her as soon as may be after my decease, and also all my household goods, kitchen furniture, books, ornaments and pictures in the house in which I reside, being premises No. 1528 Fifteenth street, northwest, in the city of Washington, District of Columbia.

Item. I give and bequeath to my beloved nephew George S. Parker the sum of one hundred (100) dollars.

Item. I give and bequeath to my beloved nephew Henry P. Parker the sum of one hundred (100) dollars.

Item. I give and bequeath Father Paul Reynolds, assistant pastor of St. Mat-hews church of this city, the sum of one hundred (100) dollars.

6 Item. There is now in my hands, as administratrix of my brother, Thomas Jefferson Parker, a certain promissory note for the sum of nine hundred (900) dollars, made by my late husband, now deceased, and secured by a deed of trust on lot numbered thirty-six (36) in the subdivision of square numbered one hundred and ninety-four (194) being house and premises No. 1528 15th street N. W. where I now reside. One-third ($\frac{1}{3}$) of said note belongs to myself as one of the heirs of my said brother. Now, it is my will, and I do give and bequeath to my beloved daughter, Frances Marion Rich, all my interest in said note, unless the same shall be paid before my death, to be paid to her by my executor, hereinafter named, as soon as the same is paid.

I also hold sixteen (16) notes, aggregating in amount four hundred dollars, made by John B. Hyman and secured by deed of trust on lot lettered "C" in square numbered two hundred and seventy-

seven (277) which said notes I also give and bequeath to my said daughter, Frances Marion Rich.

Item. I give and bequeath to my executor, hereinafter named, the sum of five hundred (500) dollars to be held by him in trust, to be disbursed, under the direction of my said cousin, Mary C. Lemmon, for masses to be said for the repose of my soul, and for those of others of my family.

Item. It is my will and I do hereby order that my home and lot, wherein I now reside, being lot numbered thirty-six (36) in square numbered one hundred and nin-ty-four (194) as per plat in Book C. H. B. page 189, of the office of the surveyor of the District of Columbia, be converted into money as soon as the same can conveniently be done after my decease; and for that purpose, I do authorize and empower my said executor, hereinafter named, to sell and dispose of the same, either at public or at private sale, for the best price that can be gotten for the same, and by proper deed or deeds, con-
7 veyance or assurance in the law, to be duly executed, acknowledged and perfected, to grant, convey and assure the same to the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase-money. And when, and as soon as the same shall have been converted into money as aforesaid: then, I will and direct that after the expenses attending such sale, and all incumbrances upon said property, if any exist, are paid, the remainder shall be divided into two (2) equal parts or shares, and disposed of as follows, to wit: one equal half part or share thereof I give, devise and bequeath unto my said daughter, Frances M. Rich, and the remaining half or share thereof I give, devise and bequeath to my said cousin, Mary C. Lemmon, their heirs and assigns forever. And as touching all the rest, residue, remainder and reversions of my estate, real, personal and mixed, of what kind or nature soever, of which I shall die *siezed* and possessed, or to which I shall be entitled at my decease, I give, devise and bequeath the same unto my friend and pastor, Father Paul Reynolds. To have and to hold the same unto him, the said Father Paul Reynolds, his heirs and assigns forever. And lastly, I do hereby nominate, constitute and appoint my friend Leopold Stargardter, to be sole executor of this, my last will and testament, hereby revoking all former wills by me at any time heretofore made, and confirming this, and none other, to be my last will and testament.

In witness whereof I have hereunto set my hand and affixed my seal this 6th day of November, A. D. 1897.

FRANCES MARION LOUGHRAN. [SEAL.]

Signed, sealed, published and declared by Frances Marion Loughran, the above-named testatrix, as and for her last will and testament, in the presence of us, who at her request, in her presence, and in the presence of each other have subscribed our names as wit-
8 nesses thereto.

LOUIS GUNDLING.
PHIL B. VOORHEES.
J. F. STALLINGS.
GEORGE PARKER.

DISTRICT OF COLUMBIA, *To wit:*

On the 13th day of November, 1897, came James H. Taylor and made oath on the Holy Evangels of Almighty God that he does not know of any will or codicil of Frances Marion Loughran, late of said District, deceased, other than the aforegoing instrument of writing dated Nov. 6th, 1897, and that he received the same from Leopold Stargardter (the executor therein named) Nov. 13th, 1897, and herewith files the same, and said Frances Marion Loughran died on or about the 9th day of November, 1897.

JAMES H. TAYLOR.

Sworn to and subscribed before me.

S. THOMPSON, JR.,
Acting Register of Wills for the District of Columbia.

9 *Answer of Defendants Rich.*

Filed Jan. 4, 1898.

In the Supreme Court of the District of Columbia.

MARY C. LEMMON
vs.
FRANCES M. RICH ET AL. } In Equity. No. 1892.

The defendants Frances M. Rich and John S. Rich, her husband, for answer to the bill of complaint in this cause say:

1. They admit that the complainant is a citizen of the United States and a resident of the District of Columbia, but they deny the right of said complainant to sue as a devisee under the will of said Frances M. Loughran, and they aver that said Frances M. Loughran never executed nor published a last will and testament, and say that she died intestate.

2. They admit that said defendants, except James M. Parker, reside in the District of Columbia, and that said James M. Parker resides in Hampton, Virginia. They say that said Frances M. Rich is entitled to and claims said real estate as sole heir of her deceased mother. They admit that said John S. Rich is the husband of said Frances M. Rich. They deny that said Stargardter has any right, title, or power as executor of said alleged will.

They admit that Frederick R. Sparks and Stephen C. Hanson are the trustees named in the certain deed of trust set forth in paragraph 2 of said bill. They also admit that defendants James M. Parker, Henry P. Parker, and George S. Parker are some of the next of kin of said Thomas J. Parker, deceased, and that defendants Ridout and Taylor are collectors of the estate of said Frances M. Loughran, who was a sister and one of the next of kin of said Thomas J. Parker.

10 3, 4, & 5. They admit the allegations of paragraphs 3, 4, and 5 of said bill.

6. They admit the death of Frances M. Loughran on the 9th day of November, 1897, but they deny that said deceased left a last will and testament, and say that the paper-writing dated November 6th, 1897, purporting to be the last will and testament of said deceased, is not such last will and testament, for the reasons that said paper-writing was procured to be executed (if it ever was executed by the deceased, which these defendants do not admit) by fraud, imposition, and undue influence, practiced and exerted upon the said deceased by the complainant Mary C. Lemmon, said Leopold Stargardter, or some other person or persons.

They admit that said paper-writing purports to confer upon said Stargardter the power to sell and convey said real estate, but for the reasons aforesaid they say that no valid power is by said paper-writing in anywise conferred upon said Stargardter touching said real estate, nor was any interest in said real estate thereby conferred upon said Mary C. Lemmon.

They deny that complainant was lawfully in possession of said real estate at the date of said Frances M. Loughran's death, though they admit that since said death said Lemmon has unlawfully held possession of the said real estate up to the present time.

7. They have no knowledge nor information concerning the allegations of the 7th paragraph of said bill and can neither admit nor deny the same.

If the same be material, they demand strict proof thereof, but they further say that such refusal, if made, was proper because, as heretofore shown and as the fact is, said Stargardter is wholly without power to sell said real estate.

8. They deny that there is any danger of foreclosure of said deed of trust referred to in the 8th paragraph of the bill, and on
11 the contrary aver that the persons entitled to said security have no present intention of immediate foreclosure.

9. Answering the 9th paragraph of said bill, these defendants deny that sale of said real estate would be of advantage to any person interested therein, and they say that the only person lawfully interested in said real estate is the defendant Frances M. Rich, and that sale of said real estate at this time is not desired by her, nor is any decree of this court necessary to effect such sale, should she desire to make it.

Further answering, these defendants say that they are advised and insist that this court cannot take any notice of, nor give any effect to said alleged will until after the validity thereof has been legally established, which has never been done, and they further say that the complainant has not in and by her said bill made or stated such a case as entitles her to any relief in this court, and these defendants pray the same benefit of these objections as if raised by demurrer.

And, having fully answered, these defendants pray to be hence dismissed with their costs.

FRANCES M. RICH.
JOHN S. RICH.

We do solemnly swear, each for ourselves and not one for the other, that we have read the foregoing answer by us subscribed and know the contents thereof, *that we have read the foregoing answer by us subscribed and know the contents thereof;* that the facts therein stated as of our personal knowledge are true, and those stated on information and belief we believe to be true.

FRANCES M. RICH.
JOHN S. RICH.

Subscribed and sworn to before me this 4th day of January, A. D. 1898.

J. R. YOUNG, *Clerk,*
By L. P. WILLIAMS,
Ass't Clerk.

12 *Order Appointing Receivers.*

Filed Jan. 4, 1898.

In the Supreme Court of the District of Columbia.

MARY C. LEMMON *vs.* FRANCES M. RICH. } In Equity. No. 18924.

This cause coming on to be heard upon the motion of the solicitor for Mary C. Lemmon for the appointment of a receiver of the real estate described in these proceedings, it is this 4th day of January, 1898, ordered, with the assent of counsel for Frances M. Rich, that James H. Taylor and John Ridout be, and they are hereby, appointed receivers in this cause of the said real estate, and as such are hereby authorized to take possession and control of the same, and to rent the same to the best advantage, and otherwise to manage the same subject to the order and direction of this court, provided that before entering upon the discharge of their said duties the said receivers shall execute and file in this cause their separate bond in the penal sum of $500 each, conditioned for the faithful discharge of their duties as such receivers.

By the court:

W. S. COX,
Associate Justice.

I consent.
JNO. RIDOUT,
For F. M. Rich.

13 *Answer of Sparks and Hanson to Bill.*

Filed March 9, 1898.

In the Supreme Court of the District of Columbia.

MARY C. LEMMON
vs.
FRANCES M. RICH ET AL. } In Equity. No. 18924.

The defendants Frederick R. Sparks and Stephen C. Hanson, for answer to the bill of complaint in this cause, say:

1, 2. They admit the residence of the parties as set forth in the said bill.

3. Answering the third paragraph of said bill, they say that they have no personal knowledge of the matters and things therein set forth and can neither admit nor deny the same.

4. Answering the fourth paragraph of the said bill, they admit they are the trustees named in the deed of trust set forth in said paragraph, but as to the other matters and things set forth in said paragraph they say that they have no knowledge and can neither admit nor deny the same.

5, 6, 7. Answering the fifth, sixth, and seventh paragraphs of said bill, they say that they have no personal knowledge of the matters and things therein set forth and can neither admit nor deny the same.

8. Answering the eighth paragraph of said bill, they admit that the said trust is overdue.

And the defendants, having answered so much of the said bill as they are advised it is necessary for them to answer, submit themselves to the jurisdiction of the court.

F. R. SPARKS.
STEPHEN O. HANSON.

Affidavit waived.
TAYLOR & PAYNE,
Sol'rs for Compl't.

14 *Petition for Sale.*

Filed March 9, 1898.

In the Supreme Court of the District of Columbia.

MARY C. LEMMON
vs.
FRANCES M. RICH ET AL. } In Equity. No. 18924.

The petition of Mary C. Lemmon, the complainant in the above-entitled cause, respectfully shows as follows:

1. That since the filing of her bill of complaint in this cause and

the appointment of receivers thereunder to take charge of the real estate in the said bill of complaint described, the said receivers have endeavored to rent the said property, but on account of the pending litigation set forth in the said bill, and also for the reason that the property is liable to be sold at any time under the trust in said bill mentioned, they have been unsuccessful in obtaining a tenant for the said property.

2. That said property is in urgent need of repairs to protect it from the elements, and the said receivers have no funds in their hands with which to make repairs and to pay taxes and other necessary expenses, and your petitioner is also informed and believes that the said property will deteriorate and be seriously damaged and its value will be greatly diminished if it is not repaired speedily.

3. The trust upon the said property, which is described in the fourth paragraph of her bill of complaint, your petitioner states was intended to secure to Thomas J. Parker the payment of a promissory note for $1,500, due in five years from October 4th, 1882, without interest. Of the said sum of $1,500 only a balance of $900 is due at the present time, but according to a petition filed in the orphans' court by John Ridout, Esq., administrator *d. b. n.* of the estate of Thomas J. Parker, it appears that as such administrator he intends to claim interest from the maturity of the note. He also states in said petition that this balance is the principal asset of his decedent.

4. It will therefore be the duty of the said administrator to proceed at once to collect the amount due on said note by a sale under said deed of trust, the same being several years overdue.

5. That your petitioner is informed, and therefore avers, that the above-mentioned note was not intended to bear interest either before or after maturity, and that no interest has heretofore been demanded or contemplated by the parties interested, and your petitioner therefore alleges that the payment of said note should be under the order and direction of this court, where proof can be taken as to the amount due thereon.

6. That the only interest of the parties hereto as heirs-at-law or devisees of the late Frances Marion Loughran is the equity of redemption, which is diminishing in value by reason of deterioration of the property, taxes, and accumulation of interest on said trust, if said interest is found to be a proper charge; and if the said property is sold under said deed of trust the value of the said equity would be further decreased by the costs of trustees' commissions, advertising, and auctioneer's charges, which would be considerably larger than those incurred by a sale under order of this court. And your petitioner further alleges that in the event of sale under the aforesaid deed of trust the proceeds of sale would come into the hands of parties not under bond and not responsible to the court for the strict performance of their duties as trustees or the proper application of the proceeds of sale.

Your petitioner prays that James H. Taylor and John Ridout, the

receivers heretofore appointed in this cause to take charge of
16 and rent the said property, be authorized and directed to sell the same and to bring the funds into the registry of the court to abide its further decree in the premises.

MARY C. LEMMON.

TAYLOR & PAYNE,
Sol'rs for Compl't.

DISTRICT OF COLUMBIA, *ss:*

Mary C. Lemmon, being duly sworn, on oath says that she has read the foregoing petition by her subscribed and knows the contents thereof, and that the matters and things therein stated as of her personal knowledge are true, and that those stated upon information and belief she verily believes to be true.

MARY C. LEMMON.

Subscribed and sworn to before me this 9th day of March, 1898.

ALFRED B. BRIGGS,
Notary Public.

[SEAL.]

Answer of Defendants Rich to Petition.

Filed March 12, 1898.

In the Supreme Court of the District of Columbia.

MARY C. LEMMON
vs.
FRANCES M. RICH ET AL. } In Equity. No. 18924.

The defendants Frances M. Rich and John S. Rich, her husband, for answer to the petition of Mary C. Lemmon filed herein, praying sale of the real estate described in the bill, say:

17 1. They admit that said real estate has not yet been rented, though they believe there is a good prospect of early rental thereof, and they deny that the pendency of this cause or the possibility of sale under the deed of trust referred to in said petition have in anywise prevented such rental.

2. They deny that the house on said real estate is in need of repairs, but say that it is in good repair, and in no danger whatever of injury from the elements, and say that if such repairs should become necessary, the said Frances M. Rich stands ready to advance such sum of money as may be necessary for the purpose. These respondents deny that the value of said real estate will be impaired by delay in its sale and assert that the enhancement in its price by delay of sale until a propitious season will very much more than compensate for any trifling expense for repairs.

They further say that whether the said Frances M. Loughran died testate or not, the rental of said real estate until sale thereof belongs to said Frances M. Rich, and that rather than have the said real estate forced to sale now, she is willing to lose such rental as may be lost pending a sale.

3. They say that the deed of trust to secure Thomas J. Parker was

intended to and does secure the sum of $1,500, without interest until maturity, but with interest from maturity until paid, and they are advised that such is the legal effect of the terms of said note, which are unequivocal, and that no resort can be had to any extrinsic circumstances for its interpretation.

The amount due under said deed of trust is $1,500, with interest from October 31st, 1887, less $600 paid September 2nd, 1896, and they admit that John Ridout, as administrator *de bonis non* of the estate of Thomas J. Parker, deceased, claims this amount and
18 interest under said deed of trust. They further say that said John Ridout should be made a party to this cause as such administrator.

4. They deny that any immediate sale under said trust is contemplated, and say that they are informed no sale will be attempted until the complications surrounding the title to said real estate have been cleared up.

5. They insist that said $1,500 note bears interest from its maturity at the rate of six per cent. per annum, and they say that all questions coucerning the legal effect of said note can be effectively adjudicated without sale by said receivers.

6. The said real estate is, according to the record, subject, in addition to the Parker deed of trust, to one from Joseph F. Loughran and wife to Charles B. Purvis and Brainard H. Warner to secure Robert Purvis $1,700 in three years from October 28th, 1875, which trust is recorded in Liber 801, folio 215, of the land records of the District of Columbia.

This trust is unreleased, neither the trustees nor the party secured are parties to this cause, and no advantageous sale could be made unless that apparent encumbrance is disposed of.

It is time that the title of Frances M. Loughran was an equity of redemption, but whether subject to one or two trusts, cannot be adjudicated in this cause with its present parties.

The said real estate can at the proper time and after final hearing be decreed to be sold if the court shall deem that course necessary, but such sale by the receivers before any establishment of the rights of complainant, of which there is not now even *primæ facie* evidence, and against the objection of the heir-at-law, who is entitled to a trial by jury of the validity of said alleged will, would, as these respondents are advised, be beyond the jurisdiction of the court.

19 These respondents further say that sale by receivers pending final hearing is a strong measure, never justifiable except to avert practical destruction of the property, and not then unless the application is made or consented to by the party having title. An additional reason for delay of sale is that a number of deaths have occurred within the house within a short period, and at present this fact would deter bidders.

FRANCES M. RICH.
JOHN S. RICH.

JOHN RIDOUT,
Solicitor for Respondents.

DISTRICT OF COLUMBIA, *To wit:*

We do solemnly swear that we have read the foregoing answer by us subscribed and know the contents thereof; that the facts therein stated as of our personal knowledge are true, and those stated on information and belief we believe to be true.

FRANCES M. RICH.
JOHN S. RICH.

Subscribed and sworn to before me this 12 day of March, A. D. 1898.

J. R. YOUNG, *Clerk*,
By R. J. MEIGS, JR., *Ass't Clerk.*

20 *Amended Bill.*

Filed August 4, 1898.

In the Supreme Court of the District of Columbia.

MARY C. LEMMON
vs.
FRANCES M. RICH ET AL. } No. 18924. Equity.

The amended bill of complaint of Mary C. Lemmon respectfully shows as follows:

1. That at the time of her original bill of complaint in this cause was filed the estate of Thomas J. Parker was without a legal representative, Francis M. Loughran, whose death is set forth in the said original bill, having been his administratrix.

2. That since the filing of the said original bill of complaint, to wit, on the — day of ——, 1898, John Ridout, Esq., has been appointed administrator *d. b. n.* of the said estate of the said Thomas J. Parker, deceased, by the supreme court of the District of Columbia, holding a special term for probate business.

3. To the end, therefore, that the estate of the said Thomas J. Parker may be duly represented in this proceeding, and that the said John Ridout, administrator *d. b. n.* of the estate of the said Thomas J. Parker, may be made a party defendant to this proceeding, and may answer the matters and things set forth in the said original bill as well as in this amended bill set forth and contained, and that the complainant may have such further and other relief against the said administrator *d. b. n.* as the nature of her case shall require or to the court shall seem meet, she prays that writ of subpœna may be issued against the said John Ridout, administrator,

21 as aforesaid, requiring him to appear and answer the exigencies of the original bill of complaint and of this amended bill.

MARY C. LEMMON.

TAYLOR & PAYNE, *Sol'rs.*

DISTRICT OF COLUMBIA, }
County of Washington. }

Mary C. Lemmon, being duly sworn, on oath says that she has read the foregoing amended bill of complaint by her subscribed and knows the contents thereof, and that the matters and things therein set forth as of her personal knowledge are true, and that those set forth upon information and belief she verily believes to be true.

MARY C. LEMMON.

Subscribed and sworn to before me this 3rd day of August, 1898.
[SEAL.] WILLIAM SELBY,
Notary Public.

Decree for Sale.

Filed August 16, 1898.

In the Supreme Court of the District of Columbia.

MARY C. LEMMON
vs.
FRANCES M. RICH ET AL. } No. 18924. Equity.

This cause coming on to be heard upon the bill of complaint, the amended bill of complaint, and petition of Mary C. Lemmon and the answers thereto, it is, this 16th day of August, 1898, ordered, adjudged, and decreed that James H. Taylor and John Ridout, the receivers heretofore appointed in this cause, do proceed forthwith to make sale of the real estate in this proceeding described, to wit,

22 all of that piece or parcel of ground and premises situated in the city of Washington, in District of Columbia, and known and described as and being all of lot numbered thirty-six (36), in the subdivision of square one hundred ninety-four (194) made by Columbian college, James Miller, and Joseph Abbott, and recorded in Liber C. H. B., fol. 101, of the records of the office of the surveyor of the District of Columbia, the said lot having a frontage of twenty-three (23) feet and nine (9) inches on Fifteenth street northwest and running back of the same width one hundred (100) feet. The manner of their procedure shall be as follows: After ten days' notice, to be published in the Evening Star newspaper daily, except Sunday, they shall sell the said real estate at public auction to the highest bidder upon the following terms: One-third of the purchase-money to be paid in cash and the balance in two equal installments, payable in one and two years respectively, with interest at the rate of six per centum (6 %) per annum, payment to be secured by deed of trust upon the said property, or all cash at the option of the purchaser. A deposit of two hundred dollars ($200) shall be required from the purchaser at the time the property is knocked down to him. The said receivers are authorized to sell the said property at the cost and risk of the defaulting purchaser, upon

ten days' notice, if the terms of sale are not complied with in ten days from the day of sale. The receivers shall make a report of their proceedings under this order to the court, and upon final ratification of any sale made by them they are authorized to convey the said real estate to the purchaser or purchasers thereof in fee-simple; and the net proceeds of such sale, when consummated, after payment of all proper costs, charges, commissions, and expenses of sale, shall represent the property sold, and shall be brought into court to abide by its further order; this order not being intended to adjudicate any rights of the parties to this cause nor as establishing the validity of the paper relied upon by the complainant as the
23 last will of Frances Marion Loughran, all questions raised thereon being reserved for the further order of the court.

A. C. BRADLEY, *Justice.*

I consent.

JOHN RIDOUT,

For All Def'ts Represented by Him and for Himself as Adm'r d. b. n. of Thos. J. Parker.

We consent.

TAYLOR & PAYNE.

Receivers' Report.

Filed September 2, 1898.

In the Supreme Court of the District of Columbia.

MARY C. LEMMON
vs.
FRANCES M. RICH ET AL. } No. 18924. Equity.

The report of James H. Taylor and John Ridout, receivers heretofore appointed in this cause and authorized and directed to make sale of the real estate therein mentioned and described by decree passed herein on the 16th day of August, 1898, shows as follows:

That after giving notice of the time, place, manner, and terms of sale by advertisement in the "Evening Star," a newspaper printed and published in the city of Washington, for ten days before the day of sale, as required by said decree, they did, in pursuance to said notice, attend on the premises in the said city of Washington, on the 30th day of August, 1898, at the hour of five o'clock p. m., and did then and there proceed to sell the real estate described in this proceeding, to wit, all of lot numbered thirty-six (36), in the sub-
24 division of square numbered one hundred and ninety-four (194) made by Columbian college, James Miller, and Joseph Abbott, and recorded in Liber C. H. B., folio 101, of the records of the office of the surveyor of the District of Columbia, together with the improvements thereon, and sold the same to Franklin Rives, the highest bidder therefor, at and for the sum of forty-five hundred dollars ($4,500).

The weather was fair, a large number of persons were present, and the sale was in all respect- fairly made by the said receivers. The receivers in making the said sale complied in all substantial respects with the provisions of the rule governing such sales, and the purchaser has complied with the terms of sale.

JAMES H. TAYLOR.
JOHN RIDOUT.

Subscribed and sworn to before me this 2d day of September, 1898.

J. R. YOUNG, *Clerk*,
By R. J. MEIGS, JR., *Ass't Clerk*.

Petition of Sarah Loughran.

Filed Sept. 16, 1898.

In the Supreme Court of the District of Columbia.

MARY C. LEMMON
vs.
FRANCES M. RICH ET AL. } Equity. No. 18924.

To the supreme court of the District of Columbia, holding a special term as a court of equity:

The petition of Sarah Loughran respectfully showeth:

25 1. The petitioner is a citizen of the United States and a resident of the city of Brooklyn, in the State of New York, and she seeks to establish her right to the real estate decreed to be sold in this cause and the rents and proceeds thereof and now in the custody and control of receivers appointed by this court in this cause.

2. The petitioner claims title to said real estate and proceeds of sale as the only heir-at-law of Joseph F. Loughran under the provisions of a certain deed of trust from said Joseph F. Loughran and Frances Marion Loughran, his wife, hereinafter more fully set forth in the 6th paragraph hereof, and the complainant, Mary C. Lemmon, and the defendant Frances M. Rich claim said real estate and proceeds of sale as the devisee and only heir-at-law respectively of said Frances Marion Loughran under the deed to said Joseph F. Loughran and Frances Marion Loughran hereinafter more fully set forth in the 5th paragraph hereof, under the claim of the joint tenancy of said Joseph F. Loughran and Frances Marion Loughran and survivorship of said Frances Marion Loughran, all of which is hereafter more fully set forth and appears in the bill and answer in this cause.

3. By deed from James E. Fitch, dated January 21, 1874, and recorded February 10, 1874, in Liber 740, at folio 391 *et seq.*, of the land records of the District of Columbia, said Joseph F. Loughran acquired a fee-simple title to lot numbered thirty-six (36), in square

numbered one hundred and ninety-four (194), in the city of Washington, D. C., according to the subdivision made by Columbian college and others, and recorded in Liber C. H. B., folio 101, of the records of the office of the surveyor of the District of Columbia, being the same real estate described in the proceedings in this cause.

4. By deed dated December 11, 1875, and recorded February 8, 1877, in Liber 840, at folio 376 *et seq.*, of said land records, said Joseph F. Loughran and Frances Marion Loughran, his wife, conveyed said lot to Thomas J. Parker, a brother of said Frances
26 Marion Loughran, to have and to hold the same unto him, his heirs and assigns, or the survivor of them, his heirs and assigns, to and for their sole use, benefit, and behoof forever. Said Joseph F. Loughran at the time of said conveyance was indebted to said Thomas J. Parker, and said conveyance was given as security for said debt.

5. By deed dated September 22nd, 1882, and recorded September 25, 1882, in Liber 1016, at folio 43 *et seq.*, of said land records, said Thomas J. Parker reconveyed said lot to said Joseph F. Loughran and Frances Marion Loughran, his wife, their heirs and assigns, or the survivor of them, his heirs and assigns, to and for their sole use, benefit, and behoof forever.

6. And by deed dated October 31, 1882, and recorded November 13, 1882, in Liber 1016, at folio 376 *et seq.*, of said land records, said Joseph F. Loughran and Frances Marion Loughran, his wife, conveyed said lot to Frederick R. Sparks and Stephen C. Hanson, trustees, to secure the payment of a note of $1,500, payable to the order of said Thomas J. Parker five years after said date, without interest, and in and upon the trusts nevertheless mentioned therein and declared—that is, "in trust to permit the said Joseph F. Loughran, his heirs or assigns, to use and occupy the said described premises and the rents and profits thereof to take, have, and apply to and for his and their sole use and benefit until default be made in the payment of said promissory note, or any installment of interest due thereon, or any proper cost, charge, commission, half commission, or expense in and about the same, and upon full payment of all of said promissory note and any extension or renewals thereof, and the interest thereon, and all other proper costs, charges, commission-, half commissions, and expenses incurred by means of these trusts at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said Joseph F. Loughran, his heirs or assigns, at his or their cost.

27 "And upon the further trust that upon default being made in the payment of the said promissory note at maturity, or any installment of interest due thereon, or any proper cost, charge, commission, half commission, insurance or other proper expense in and about the same, then and at any time thereafter to sell the said piece or parcel of land and premises, or any portion thereof, at public auction, in front of the premises, after at least ten (10) days' notice of the time, place, and terms of sale by advertisement in some one

or more of the newspapers printed and published in the said city of Washington, upon such terms and conditions as the said trustees or the survivor of them may deem most advantageous to the parties interested, and with further power to postpone the sale from time to time, in their or his discretion, and to resell on default of the purchaser. And upon this further trust, upon full compliance of the terms of sale to convey the property sold in fee-simple to the purchaser or purchasers thereof, at his or their costs and expense, and without any liability to the said holder or holders, or to the purchaser, to see to the application of the purchase-money, and out of the proceeds of said sale or sales, first, to pay all proper costs, charges, and expenses, and to retain as compensation a commission of five per cent. on the amount of said sale or sales; secondly, to apply said purchase-money to the payment of whatever may then remain unpaid of the said promissory note and the interest thereon to the time of said sale, whether the same shall be due or not; and, lastly, to pay the remainder, if any, to said Joseph F. Loughran, his heirs or assigns." A certified copy of said deed of trust is attached hereto as part hereof.

7. Said Joseph F. Loughran died on the 17th day of March, 1897, and left surviving him, as his only heir-at-law, the petitioner, who is his sister, and also left surviving him a widow, said Frances
28 Marion Loughran. Said Joseph F. Loughran left a last will and testament, dated April 3, 1893. On the 9th day of April, 1897, said will and testament was duly admitted to probate and record by the supreme court of the District of Columbia, holding a special term as an orphans' court, and letters testamentary on said estate were granted to the said Frances Marion Loughran, widow.

By said will said lot was devised to said Frances Marion Loughran for and during the term of her natural life and after her death in fee-simple to Mary B. Loughran, a daughter of said Joseph F. Loughran, but said Mary B. Loughran died prior to her father, on the 28th day of September, 1896. Said Frances Marion Loughran, widow, died on the 9th day of November, 1897. A certified copy of said will is attached hereto as an exhibit.

8. By the death of said Joseph F. Loughran the equitable fee-simple title to said lot became vested in the petitioner, subject only to the rights of the holder of the note secured by said deed of trust and the life estate of said Frances Marion Loughran, widow, under said will, and by the death of said Frances Marion Loughran, widow, the petitioner became entitled to the possession and rents of said lot, subject only to the claim of the holder of said deed of trust note.

9. The petitioner further shows that although after the death of said Joseph F. Loughran said Frances Marion Loughran had no interest in said lot, except a life estate under said will, as aforesaid, and claimed and acted under said will and asserted no interest in said lot other than under said will, and believed that she had no other interest therein until erroneously advised at the time of the making of her will, three days before her death, that she owned

a fee-simple title to said lot, she, when so advised, undertook, it is alleged, to dispose of said lot by her will. Litigation touching the validity of said will is now pending between the heir and the devisees and legatees of said Frances Marion Loughran, as the records in this case show, and the said lot has been taken
29 possession of by the receivers in the cause, under the order of this court, on the erroneous allegation that said Frances Marion Loughran was the owner thereof in fee at the time of her death.

10. The petitioner further shows that said Frederick R. Sparks and Stephen C. Hanson, trustees, are parties to this cause and have answered the bill of complaint, but the petitioner is not a party to this cause; that the legal title to said lot being vested in said Frederick R. Sparks and Stephen C. Hanson in trust, as aforesaid, and the court having assumed jurisdiction over said trustees and said trust, and having appointed John Ridout and James H. Taylor receivers to take possession of and collect the rents of said lot and directed them to sell said lot, and receivers having collected said rents and sold said lot on the 30th day of August, 1898, to Franklin Reeves for $4,500, with the statement and on the assumption that the title to pass was good and clear of all claim, the petitioner apprehends that her title in equity to the said lot may be prejudiced by the decree for sale passed herein on the 16th day of August, 1898, and that she may be thereby deprived of her right of redemption. But she shows to the court that under said deed of trust she is entitled to said real estate and the entire proceeds of sale thereof and the rents thereof after the payment of the balance due on the note secured by said deed of trust referred to in the proceedings in this cause, and if the title of said Frederick R. Sparks and Stephen C. Hanson as trustees for petition, as aforesaid, passes by said decree to a purchaser from said receivers, then said proceeds of sale after payment of said secured debt should be declared to belong to the petitioner and be paid to her; but if the title of said trustees does not pass by said decree, then the title of the purchaser from the receivers should be declared to be servient to the title of said trustees and this petitioner.

The petitioner is willing to abide by said sale by said receivers, provided she be made a party to this cause and be allowed —
30 prosecute and have adjudicated in this cause her right to said balance of proceeds of sale and accumulated rents; and as all of said parties are still before the court and the said proceeds of sale are under its control, the petitioner prays:

1. That she be allowed to file this her intervening petition and be allowed to intervene as a party to this cause.

2. That the complainant Mary C. Lemmon and the defendant Frances M. Rich, and each of them, be required to answer this petition and show, if they can, why the petitioner should not have paid to her the said balance of the proceeds of sale and accumulated rents of said real estate.

3. That said rents and balance of said proceeds of sale be paid to the petitioner, and

4. That she may have such other and further relief in the premises as the nature of the cause may require and that may be just, equitable, and proper.

SARAH LOUGHRAN.

H. W. SOHON,
Sol'r for the Petitioner.

I do solemnly swear that I have read the foregoing petition by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

SARAH LOUGHRAN.

Subscribed and sworn to before me this 5th day of September, 1898.

[SEAL.]

JOSEPH ISAACS,
Notary Public, N. Y. Co.

31 EXHIBIT TO PETITION.

Joseph F. Loughran *et ux.* to Fred'k R. Sparks *et al.* } Trust. Recorded November 13th, 1882, 10.16 a. m.

This indenture made this thirty-first day of October in the year of our Lord one thousand eight hundred and eighty-two by and between Joseph F. Loughran and Frances M. Loughran his wife of the city of Washington, District of Columbia of the first part, and Frederick R. Sparks and Stephen C. Hanson of the same city and District parties of the second part: Whereas the said Joseph F. Loughran is justly indebted unto Thomas J. Parker in the full sum of fifteen hundred ($1,500) dollars for which amount he hath made signed and delivered unto the said Thomas J. Parker payable to his order five (5) years after date his certain promissory note of even date herewith in and for the aforesaid amount without interest and being desirous to secure the punctual payment of said note when and as the same shall become due and payable with all interest and costs due and accruing thereon as well as any renewals or extensions therefore executes these presents: Now therefore this indenture witnesseth that the said parties of the first part for and in consideration of the premises aforesaid and further the sum of one dollar in lawful money of the United States paid to them by said parties of the second part have granted, bargained, sold, aliened, enfeoffed, released and conveyed and do by these presents grant, bargain, sell, alien, enfeoff release and convey unto the said parties of the second part and the survivor of them his heirs aud assigns the following-described real estate situate in the city of Washington, District of Columbia, to wit: all that certain piece or parcel of ground situate and lying in the city of Washington District of Columbia and known and described as lot numbered thirty-six (36) in a subdi-
32 vision of square numbered one hundred and ninety-four (194) made by Columbian college, James Miller and Joseph

Abbott and recorded in the office of the surveyor of said city of Washington, in Liber C. H. B. folio 189, said lot having a frontage of twenty-three (23) feet and nine (9) inches on Fifteenth street west and running back with even width one hundred (100) feet and containing twenty-three hundred and seventy-five (2,375) square feet of ground more or less, together with all the easements, hereditaments and appurtenances to the same belonging or in anywise appertaining and all the estate, right, title, interest and claim whatsoever whether in law or in equity of the said parties of the first part of, in, to or out of the said piece or parcel of land and premises. To have and to hold the said piece or parcel of land and premises with the appurtenances unto and to the use of the said parties of the second part the survivor of them or his heirs or assigns. In and upon the trusts nevertheless hereinafter mentioned and declared, that is in trust to permit the said Joseph F. Loughran his heirs or assigns to use and occupy the said described premises and the rents, issues and profits thereof, to take, have and apply to and for his and their sole use and benefit until default be made in the payment of said promissory note or any instalment of interest due thereon or any proper cost, charge, commission, half commission or expense in and about the same. And upon full payment of all of said promissory note and any extension or renewals thereof and the interest thereon and all other proper costs, charges, commissions, half commissions and expenses incurred by means of these trusts at any time before the sale hereinafter provided for to release and reconvey the said described premises unto the said Joseph F. Loughran his heirs or assigns at his or their cost.

And upon this further trust that upon default being made in the payment of the said promissory note at maturity or any instalment of interest due thereon or any proper cost, charge, commission,
33 half commission, insurance or other proper expense in and about the same then and at any time thereafter to sell the said piece or parcel of land and premises or any portion thereof at public auction in front of the premises after at least ten (10) days' notice of the time place and terms of sale by advertisement in some one or more of the newspapers printed and published in the said city of Washington, upon such terms and conditions as the said trustees or the survivor of them may deem most advantageous to the parties interested and with further power to postpone the sale from time to time in their or his discretion and to resell on default of the purchaser.

And upon this further trust upon full compliance with the terms of sale to convey the property sold in fee-simple to the purchaser or purchasers thereof at his, her or their cost and expense and without any liability to the said holder or holders or to the purchaser to see to the application of the purchase-money and out of the proceeds of said sale or sales, first to pay all proper costs, charges and expenses and to retain as compensation a commission of five per cent. on the amount of said sale or sales; secondly to apply said purchase-money to the payment of whatever may then remain unpaid of the said

promissory note and the interest thereon to the time of said sale whether the same shall be due or not, and lastly to pay the remainder if any to said Joseph F. Loughran his heirs or assigns. And it is further agreed that if the property shall be advertised for sale under the provisions of this deed and not sold then the said trustees shall be entitled to one-half the commission above provided to be computed on the amount of the debt hereby secured.

In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

JOSEPH F. LOUGHRAN. [SEAL.]
FRANCE- M. LOUGHRAN. [SEAL.]

Signed, sealed, and delivered in the presence of—

J. ALF. HAYWARD.
THOMAS P. KANE.

34 DISTRICT OF COLUMBIA, *To wit:*

I, J. Alf. Hayward, a notary public in and for the District aforesaid, do hereby certify that Joseph F. Loughran and Frances M. Loughran, his wife, parties to a certain deed bearing date on the thirtieth day of October, A. D. 1882, and hereunto annexed, personally appeared before me, in the District aforesaid, the said Joseph F. Loughran and Frances M. Loughran being proved by the oath of a credible witness to be the persons who executed the said deed, and acknowledged the same to be their act and deed, and the said Frances M. Loughran, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal this fourth day of November, A. D. 1882.

J. ALF. HAYWARD, [SEAL.]
Notary Public.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber No. 1016, fol. 376 *et seq.*, one of the land records of the District of Columbia.

August 27, 1898.

GEO. F. SCHAYER,
Dep. Recorder of Deeds.

[Ten-cent revenue stamp attached.]

35 *Decree Ratifying Sale.*

Filed September 20, 1898.

In the Supreme Court of the District of Columbia.

MARY C. LEMMON
vs.
FRANCES M. RICH ET AL. } In Equity. No. 18924.

James H. Taylor and John Ridout, receivers, having reported the sale to Franklin Rives of lot 36, in the subdivision of square numbered 194 made by Columbian college, James Miller, and Joseph Abbott, as per plat recorded in Liber C. H. B., folio 101, in the surveyor's office of the District of Columbia, for forty-five hundred dollars ($4,500), it is this 20th day of September, 1898, ordered that said sale be, and it is hereby, finally ratified and confirmed, unless cause to the contrary be shown on or before October 19th, 1898, provided a copy of this order be published in each of the three successive issues of the Washington Law Reporter published next after the date of this order.

By the court:

L. E. McCOMAS,
Associate Justice.

36 *Stipulation.*

Filed October 19, 1898.

In the Supreme Court of the District of Columbia.

MARY C. LEMMON
vs.
FRANCES M. RICH ET AL. } In Equity. No. 18924.

In the above-entitled cause it is hereby stipulated as follows:

That the petitioner, Sarah Loughran, be admitted as a party defendant in this cause.

That her petition filed herein on the 16th day of September, 1898, stand and be treated in all respects as her answer to the bill in this cause, and also as a cross-bill filed on her behalf.

That the sale made by the receivers heretofore appointed in this cause may be finally ratified and confirmed, and that the conveyance by the said receivers shall be operative to convey all the title of all the parties to the cause, including all interest in the real estate therein described claimed by the said Sarah Loughran.

That the proceeds of sale, when received by said receivers, shall be held by them subject to the further order of the court and shall represent the real estate therein described.

That this stipulation and the order in pursuance thereof shall not be construed as in anywise impairing any rights of any party to the

stipulation, and that all rights claimed by any such party may be as effectively asserted against and in respect of the said proceeds of sale as they might be in respect of the real estate sold.

37 That the said Mary C. Lemmon and Frances M. Rich shall be treated as the defendants to said cross-bill and shall have until the first rule day in November to file answers thereto.

TAYLOR & PAYNE,
Solicitors for Complainant.
JOHN RIDOUT,
For Certain Defendants as of Record.
H. W. SOHON,
Solicitor for Sarah Loughran.

Order Making Sarah Loughran a Party.

Filed October 19, 1898.

In the Supreme Court of the District of Columbia.

MARY C. LEMMON
vs.
FRANCES M. RICH. } Equity. No. 18924.

In pursuance of the stipulation filed this day in the above-entitled cause, it is, on this 19th day of October, 1898, ordered that the intervening petitioner, Sarah Loughran, be, and she hereby is, made a party defendant in this cause; that her petition filed on the 16th day of September, 1898, stand and be treated as her answer to the bill of complaint in this cause and also as a cross-bill filed on her behalf, to the end that all her rights claimed in said petition may be fully and finally adjudicated and protected in this cause.

W. S. COX, *J.*

38 *Decree Confirming Sale.*

Filed October 21, 1898.

In the Supreme Court of the District of Columbia.

MARY C. LEMMON
vs.
FRANCES M. RICH ET AL. } At Law. No. 18924, Equity Doc. 43.

This cause coming on to be heard upon the order passed herein on the 20th day of September, 1898, and the stipulation of counsel filed in this cause on the 14th day of October, 1898, and it appearing that the said order has been duly published as required, and no cause to the contrary being shown, it is this 21st day of Oct., 1898, ordered, adjudged, and decreed that the sale reported to the court by James H. Taylor and John Ridout, receivers, on the second day of September, 1898, and confirmed *nisi* on the 20th of September, 1898, be, and the same hereby is, finally ratified and confirmed, and the re-

ceivers are hereby authorized and empowered to execute and deliver a conveyance in fee-simple of the property in this proceeding described, including all right, title, and interest of Sarah Loughran in and to the same, on the receipt by them of the full amount of the purchase-money, or one-third cash and the balance in notes secured upon the said property, according to the terms of sale. It is further ordered and decreed that this cause be, and the same hereby is, referred to the auditor to state the account of the receivers herein.

W. S. COX, *J.*

39 *Demurrer to Petition.*

Filed February 1, 1899.

In the Supreme Court of the District of Columbia.

MARY C. LEMMON
vs.
FRANCES M. RICH ET AL. } No. 18924. Equity.

The demurrer of Mary C. Lemmon to the petition of Sarah Loughran in this cause filed.

This defendant, by protestation, not acknowledging any of the matters in and by the said petition complained of to be true in manner and form as the same are therein set forth, says that she is advised that there is no matter or thing in the said petition good and sufficient in law to call upon her to make answer thereto in this honorable court, but that there is good cause of demurrer thereto, and for cause of demurrer she says—

That the said bill, in case the same were true, contains no matter of equity whereon this court can ground any decree or give the petitioner any relief as against this complainant or give the complainant any relief against the petitioner. Wherefore, and for divers other errors in the said petition contained and appearing on the face thereof, this complainant demurs thereto and prays the judgment of this court whether she ought to make answer thereto otherwise, and the complainant prays to be hence dismissed with her reasonable costs.

MARY C. LEMMON.

I solemnly swear that I have read the demurrer by me subscribed and know the contents thereof, and that the same is not interposed for delay.

MARY C. LEMMON.

40 Subscribed and sworn to before me this 4th day of November, 1898.

[SEAL.] ALFRED B. BRIGGS,
Notary Public.

We hereby certify that in our opinion the above demurrer is well founded in law.

TAYLOR & PAYNE,
Sol'rs for Compl't.

Demurrer to Petition.

Filed August 26, 1899.

In the Supreme Court of the District of Columbia.

MARY C. LEMMON
vs.
FRANCES M. RICH ET AL. } In Equity. No. 18924.

The defendant Frances M. Rich, by protestation, not confessing nor admitting the allegations of the petition filed in this cause by Sarah Loughran, doth demur thereto, and for cause of said demurrer shows—

That the said petitioner has not in and by her said petition made or stated any such case as entitles the said petitioner to the relief sought by her said petition.

Wherefore this respondent prays the judgment of the court whether she ought to be required to make any other or further answer to the said petition.

JNO. RIDOUT,
Sol'r for Respondent.

I do solemnly swear that I have read the foregoing demurrer, and that the same is not interposed for delay.

FRANCES M. RICH.

41 Subscribed and sworn to before me this 21st day of January, 1899.

[SEAL.] GEO. E. TERRY,
Notary Public.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

JNO. RIDOUT,
Sol'r for Respondent.

Order Sustaining Auditor's Report and Overruling Demurrers.

Filed December 6, 1899.

In the Supreme Court of the District of Columbia.

MARY C. LEMMON
vs.
FRANCES M. RICH ET AL. } Equity. 18924.

On consideration of the report of the auditor filed in the above-entitled cause on the 11th day of May, 1899, and the exceptions

thereto filed by John Ridout, administrator *d. b. n.* of Joseph F. Parker, deceased, June 10, 1899, it is, on this 6th day of December, 1899, adjudged, ordered, and decreed that said exceptions be, and they hereby are, overruled, and James H. Taylor and John Ridout, receivers in the above-entitled cause, are hereby authorized and directed to pay to said John Ridout, as administrator, as aforesaid, the sum of nine hundred dollars and interest thereon, at the rate of six per centum per annum, from the 15 day of April, 1897, to the 10 day of June, 1899, in full settlement and discharge of all claim on account of the note secured by deed of trust referred to in these proceedings; and it is further ordered that said receivers shall pay out of the funds in their hands as receivers the fee of the auditor for said report

42 And this cause coming on for hearing on the demurrers of Mary C. Lemmon and Frances M. Rich to the petition, answer, and cross-bill of Sarah Loughran filed herein on the 16 day of September, 1898, and the same having been argued by counsel and submitted to the court and considered, it is, on this 6 day of December, 1899, ordered and decreed that said demurrers be, and they hereby are, overruled, and said Mary C. Lemmon and Frances M. Rich shall have leave to answer or take such further proceedings as they may be advised within twenty days hereof.

A. B. HAGNER,
Asso. Justice.

Answer of Mary C. Lemmon to Petition.

Filed December 30, 1899.

In the Supreme Court of the District of Columbia.

MARY C. LEMMON
vs.
FRANCES M. RICH ET AL. } Equity. No. 18924.

The separate answer of Mary C. Lemmon to the petition of Sarah Loughran.

1. The complainant admits the residence of the said Sarah Loughran as set forth in the first paragraph of her said petition, but she denies that the petitioner has any right or title to the rents or proceeds of sale of the real estate described in this proceeding.

2. The complainant admits that she claims a moiety of the real estate described in this proceeding, or the proceeds thereof, as a devisee under the will of Frances Marion Loughran, deceased, as is set forth in the second paragraph of the said petition.

43 3. The complainant admits the matters and things in the third paragraph of the said petition contained, but alleges that the said property was purchased by Joseph F. Loughran and Frances Marion Loughran jointly, and a considerable portion of the purchase-money was paid by Mrs. Loughran with monies which she had in her own right and not derived from her husband. It was used as

the home of her mother and brothers and then contributed to all of the household expenses *pro rata.*

4. The complainant admits the conveyance in fee-simple of the real estate in this proceeding described by the said Joseph F. Loughran and Frances Marion Loughran to Thomas J. Parker by deed bearing date on the 11th day of December, 1875; but she denies that at the time the said Joseph F. Loughran was indebted to the said Thomas J. Parker, and she further denies that the said deed was intended as security for any indebtedness of the said Joseph F. Loughran or Frances Marion Loughran; and she avers that the said conveyance was intended to vest the title to the said property in the said Thomas J. Parker, the said Frances Marion Loughran's brother.

5. The complainant admits that by deed dated September 23rd, 1882, and recorded September 25th, 1882, in Liber 1016, at folio 43 *et seq.*, of the land records of the District of Columbia, the said Thomas J. Parker reconveyed the said real estate to the said Joseph F. Loughran and Frances Marion Loughran, his wife, their heirs and assigns, or the survivor of them, his heirs and assigns, to and for their sole use, benefit, and behoof forever; which said conveyance the complainant avers was made for the sole purpose of protecting the said Frances Marion Loughran's interest in the said property, in the event of her surviving her husband, by creating in the said Joseph F. Loughran and Frances Marion Loughran an estate by entireties, with survivorship.

44 6. The complainant admits the making of the deed of trust of October 31st, 1882, by the said Joseph F. Loughran to Frederick R. Sparks and Stephen C. Hanson, to secure to Thomas J. Parker the payment of an indebtedness of fifteen hundred dollars, and that Frances Marion Loughran joined in the execution of the said trust as the wife of the said Joseph F. Loughran. The complainant denies that the said joining in the execution of the said deed of trust by the said Frances Marion Loughran was intended to affect in any way her own moiety of interest, title, or estate in the said property or her right of survivorship; and the complainant denies that the said deed of trust does convey the separate estate, title, or interest of the said Frances Marion Loughran in the said property.

7. The complainant admits the matters and things in the seventh paragraph of said petition contained.

8. The complainant denies that any interest or title, equitable or at law, has become vested in the said Sarah Loughran upon the death of the said Joseph F. Loughran or at any other time, as is claimed in the eighth paragraph of the said petition.

9. Answering the ninth paragraph of the said petition, the complainant says that it is not true that the said Frances Marion Loughran was informed that she was entitled to the property by effect of the conveyance from her brother, the said Thomas J. Parker, only three days before she made her said will, but, on the contrary, the complainant avers that Frances Marion Loughran was informed

of the condition of her title a considerable time prior to the date of her said will, to wit, some time in July, 1887. The complainant also denies that the receivers have been authorized to sell the said real estate in consequence of any erroneous allegations or assumptions.

10. For answer to the allegations of the tenth paragraph
45 of the said petition, the complainant says that the said Sarah Loughran was not made a party to this cause because she has no interest or title to the property described herein, and that no reason existed when this suit was instituted or now exists for her being a party thereto. Denying that petitioner has shown herself entitled to relief, complainant prays that she be not required to further answer, &c.

MARY C. LEMMON.

TAYLOR & PAYNE,
Sol'rs for Compl't.

DISTRICT OF COLUMBIA, *ss:*

Mary C. Lemmon, being duly sworn, on oath says that she has read the foregoing answer by her subscribed, and that she knows the contents thereof, and that the matters and things therein stated of her own knowledge are true, and those stated upon information and belief she verily believes to be true.

MARY C. LEMMON.

Subscribed and sworn to before me this 29th day of December, 1899.

[SEAL.] ALFRED B. BRIGGS,
Notary Public.

Election of Def't Rich to Stand on Demurrer.

Filed July 19, 1900.

In the Supreme Court of the District of Columbia.

MARY C. LEMMON
vs.
FRANCES M. RICH. } In Equity. No. 18924.

Now comes the defendant, Frances M. Rich, by her counsel, and, electing to stand upon her demurrer, heretofore filed, to the petition of Sarah Loughran, hereby declines to plead further in response to said petition.

JOHN RIDOUT,
Solicitor for Frances M. Rich.

46 *Joinder in Issue on Complainant's Answer.*

Filed Nov. 26, 1900.

MARY C. LEMMON
vs.
FRANCES M. RICH ET AL. } Equity. No. 18924.

The petitioner, Sarah Loughran, joins isuue on the answer to her petition filed by the complainant, Mary C. Lemmon.

H. W. SOHON,
Solicitor for Petitioner.

Testimony on Behalf of Sarah Loughran.

Filed February 20, 1901.

In the Supreme Court of the District of Columbia.

MARY C. LEMMON
vs.
FRANCES M. RICH ET AL. } Equity. No. 18924.

WASHINGTON, D. C., *November* 26, 1900.

Met, pursuant to agreement, at the office of Henry W. Sohon, Esq., 344 D street northwest, in said city.

Present on behalf of the complainant: James Taylor, Esq.

Present on behalf of the defendant Sarah Loughran: Henry W. Sohon, Esq.

Whereupon MARY F. PARKER, a witness of lawful age called on behalf of the defendant Sarah Loughran, being first duly
47 sworn, is examined and testifies as follows:

By Mr. SOHON:

Q. Mrs. Parker, what relation were you to the late Joseph F. Loughran and Frances Marion Loughran, his wife? A. I am her sister-in-law.

Q. Mrs. Loughran's sister-in-law? A. Yes.

Q. How long did you know her? A. Up to the present time or up to the time of her death?

Q. Up to the time of her death. A. About thirty-six years.

Q. Do you remember when Mr. Joseph F. Loughran purchased the property on 15th street, known as lot 36, in square 194, in the city of Washington? A. In 1875 and 1876 he bought the ground.

Q. Do you remember when the house was built? A. About 1876, I think.

Q. Do you remember who furnished the money to pay for the lot? A. Thomas J. Parker.

Q. Who furnished the money to pay for the building of the house? A. He did. I always understood that he furnished the money to pay for the house and the lot.

Q. When was that? A. Between 1874 and 1876, when the lot and house was built.

Q. What relation was Thomas J. Parker to Mrs. Loughran? A. Her brother.

Q. What relation was he to you? A. Brother-in-law.

Q. From whom was your information obtained that Mr. Parker loaned the money to build the house with? A. I heard him say so himself.

48 Q. Who else did you hear say it? A. Mr. Loughran and also Marion, his wife.

Q. When did you hear them say it? At the time it was built.

Q. Where? A. In their own house.

Q. Did Mr. Loughran have any means of his own prior to the purchase of that lot? A. No, sir; he had nothing at all at the time of his marriage.

Q. Did Mrs. Loughran have any means of her own? A. No, sir; she didn't.

Q. Any money or property? A. No, sir; she had neither.

Q. How do you know that? A. Because she told me so herself.

Q. Do you remember the occasion on which Joseph F. Loughran transferred the property mentioned to Thomas J. Parker? A. I don't think I know that.

Q. You don't know the date? A. No, I don't know the date.

Q. Do you know that it was transferred? A. Yes; I heard them talk of it, Mr. Loughran and Tom, but I don't know when it was.

Q. At the time of that transfer, was Mr. Loughran indebted to Thomas J. Parker in any amount? A. Yes, he was.

Q. For what? A. Why, for the money on the house. I heard them speak of it, Mrs. Loughran and Tom, both.

49 Q. Now, coming down to a more modern time, after the death of Mr. Joseph F. Loughran, did you have any conversation with Mrs. Frances Marion Loughran, his widow, in relation to her interest in his property 1528 15th street, known as lot 36, in square 194, in this city? A. Well, she spoke of it as being the Loughran estate, and at one time she spoke about the will and said she did not like it, and that when Mr. Loughran got better he would change it.

Q. After his death what did she say? A. That the property belonged to the Loughrans.

Q. What Loughrans? A. The brother-in-law, Thomas Loughran, and his wife, Sarah.

Q. Where do they live? A. In New York.

Q. Did she say what her interest was? A. She said that she had only a life interest, and that after her death it went to the Loughrans.

Q. By the Loughrans do you mean Sarah Loughran and her husband? A. Yes, sir; and her husband.

Q. Now, — often did you hear her make such statements? A. Several times she spoke of it as being the Loughran property, and of what she would do if it had been her own.

Cross-examination.

By Mr. TAYLOR:

Q. Mrs. Parker, what relation was Mr. Thomas J. Parker to Mrs. Loughran? A. Her brother.

Q. Where did he reside? A. At the house with her, 1528 15th street.

50 Q. Did he always reside there after the house was built? A. Yes, sir; till the time of his death.

Q. When did he die? A. He died in 1897—April, 1897.

Q. Who else resided in the house? A. Well, her two brothers, Tom and Jim, and her two aunts, Miss King and Mrs. Miller, and Miss Lemmon was there for a number of years.

Q. She was a relative of his? A. Yes, sir; she was a cousin to Mrs. Loughran.

Q. The others, except Miss Lemmon, resided there from the beginning? A. Always lived together.

Q. And died there? A. Yes, sir.

Q. Do you know how they regarded the house—in connection, I mean, with the expense of running it? A. Yes; Mr. Parker bore half the expense because he had his aunt and his brother there.

Q. Didn't the fact that he had supplied money towards the building of the house—— A. No; that was separate. He always paid so much for his board and supplied other money for expenses.

Q. Yes; but I mean did he pay the portion of the expenses which would have fallen to his part of the family in cash entirely? A. Yes; he did, in cash.

Q. And the money which he had in the house was not taken into consideration at all? A. No, sir; that was not.

Redirect.

By Mr. SOHON:

Q. Do you know whether the money which Thomas J.
51 Parker advanced for the house was ever repaid to him? A. No; I do not.

Q. Did you ever hear that it was repaid? A. No; I did not.

Q. Do you know anything about it more than that? A. No; that is all I know about it.

No recross-examination.

MARY F. PARKER.

Subscribed and sworn to before me this 26th day of November, 1900.

GERALD VON CASTAL,
Examiner in Chancery.

GEORGE S. PARKER, a witness of lawful age called on behalf of the defendant Sarah Loughran, being duly sworn, is examined and testifies as follows:

By Mr. SOHON:

Q. Mr. Parker, what relation were you to Mr. Joseph F. Loughran and Frances Marion Loughran, his wife? A. A nephew to Marion Loughran.

Q. Mrs. Mary F. Parker, who has just testified, is your mother? A. Yes, sir; my mother.

Q. You remember when Joseph F. Loughran purchased the lot at 1528 15th street, in this city? A. Yes, sir.

Q. State when it was, if you recollect. A. When he bought it it was named Fifteenth and Samson street; on 15th street, one lot from Samson street.

Q. I didn't ask where it was, but when it was. A. It was somewheres a little before the Centennial. I remember it. I was a child at the time.

52 Q. Was the house on it then? A. No, sir.

Q. When was the house erected upon it? A. About a year or eighteen months after, I suppose.

Q. Did you ever hear Mr. Joseph F. Loughran or Frances Marion Loughran, his wife, say anything as to who furnished the money to build the house? A. Yes, sir.

Q. What? A. Aunt Marion spoke of it. The money was advanced by Uncle Tom.

Q. Tom who? A. Thomas J. Parker.

Q. Is "just about the time of the Centennial" the nearest you can come to fixing the date of the building of the house? A. Well, it was somewhere near that date. I was a boy about ten or eleven years of age at that time.

Q. How often did you hear Mrs. Loughran state that the money with which the house was erected was furnished by Mr. Parker. A. Well, I used to hear Uncle Joe and Aunt Marion talking over money matters and investments of money. Very frequently I heard them say it.

Q. Now, after the death of Joseph F. Loughran did you hear his widow, Frances Marion, say anything or make any declaration as to her interest in the property? A. I did.

Q. What did you hear her say? A. She came to me and said, "George, I am very sorry that this house does not belong to me that your Uncle Joe has lived and worked so hard to pay for, and that I cannot do anything at all, and that it goes to the Irish in New York." That was the remark she made.

53 Q. Did she in any other statement indicate who she meant by "the Irish in New York"? A. Yes, sir.

Q. Who? A. Mr. Loughran's sister.

Q. How often did you hear her make such statements? A. The last time I was at her house to see her before her death, in her parlor. I think my mother was present when she made the statement. The

reason she made that statement was that I never received anything from Aunt Marion, but I had an afflicted child that was named after her, and it looked as if she wished to educate that child, but her means would not allow it.

Q. Did she state what her interest in the property was? A. Her interest was that she simply had a house to live in while she lived, and she thought she would have to take boarders in to clear her table expenses. She did that, I believe.

No cross-examination.

GEORGE S. PARKER.

Subscribed and sworn to before me this 26 day of November, 1900.

GERALD VON CASTEEL,
Examiner in Chancery.

HARRY P. PARKER, a witness of lawful age called on behalf of the defendant Sarah Loughran, being duly sworn, is examined and testifies as follows:

By Mr. SOHON:

Q. I believe you are a brother of the preceding witness? A. I am.

54 Q. You are a nephew of Frances Marion Loughran? A I am.

Q. How long did you know Mrs. Frances Marion Loughran? A. Well, all my life.

Q. Did you have any business transactions with her in reference to settling the estate of Joseph F. Loughran, her husband? A. I did.

Q. What did you do for her? A. Immediately after his death she asked me to see her, and she explained that he had left a will and the provisions of it and said that there would be some legal work with the settlement of it, and that she was unable to pay for it, and asked if I could undertake it for her. I said I could get a waiver of citation from the people in New York, after notifying them of the terms of the will, and file a petition and subsequently get letters testamentary and make a collection of some amounts.

Q. Did you prepare a petition for the probate of his will at her request? A. I did.

Q. At her request? A. I did.

Q. Did you ever hear her state what interest she claimed in the house nummer 1528 15th street, known as lot 36, in square 194, in this city? A. Yes; she said very positively several times at the time of Mr. Loughran's death, immediately after his funeral—it was the time she asked me about the legal work—that he had left a life estate to her and a fee to his daughter, and that the daughter was dead, and that she would have only a life estate, and that she was exercised over it and apprehensive, and times afterward she com-

plained to me about the state of facts, and that she thought
55 she should have got the whole house instead of its going to some one else, and suggested that whenever I should go to New York, which I told her would be in the following August, I should see if the Loughrans over there would not consent to a sale of the Fifteenth Street property and the purchase of some other property where she could live and get some income out of it as well, and that their interest would be the same; and also before her death she told me she did not care to live in the 15th Street house because the associations were so distressing, and that she could not possibly exist there. Then she was sorry that she did not own the house in fee, because it was intolerable to remain there in the winter, for all the deaths had taken place there, and on account of its other associations.

I knew of the terms of the will from Mr. Loughran about a year before his death, when he suggested that I should make a will.

Q. What was the date of the last interview you had with her in which she mentioned the fact that she had only a life interest? A. Well, very shortly before her death, when she told me she could not live in the house in the winter. It was the latter part of October. I saw her a day or so before her death, but she was too ill to mention it then.

Mr. TAYLOR: What date was that?

A. The latter part of October is the time I refer to.

Mr. SOHON: When did she discover that the property had been conveyed to her and her husband jointly?

A. Not at all, to my knowledge. At the last time of which I spoke she thought she had only a life interest.

Q. Did she state to whom the remainder belonged? A. The Loughrans in New York—Sarah Loughran.

56 Q. Did you ever have any conversation with Mr. or Mrs. Loughran in which they or either of them mentioned where they got the money with which to build the house? A. No; I had no conversation with either of them on that point, but I had an idea—some information from the thing having been generally spoken of a number of years—that Thomas J. Parker had furnished the money for the house. At times they referred to that.

Q. It was common knowledge in the family? A. It was commonly talked of when there was friction between the two branches over some matter, then one would say, "Loughran doesn't own the house; Thomas J. Parker has something to say about it; his money is in it."

Cross-examination.

By Mr. TAYLOR:

Q. I think you said that Mrs. Loughran first spoke of the future disposition of the house after she had read her husband's will? A. Why, immediately after the funeral. Whether she had read the will at that time I don't know. I presume she had, because she spoke of its terms.

Q. She felt bound by its terms? A. Yes.

Q. Are you sure it was as late as October that she spoke of the property to you? A. I am sure of that; yes; it was a gloomy afternoon; similar to this. I think it was the latter part of October, because I had not gotten out there for several weeks. I was absent for a long time afterward—a week or two. I think she died the next day after I called in November.

Q. She did not refer on any of these occasions to any title
57 she previously had in the property? A. No, sir.

Q. Nothing was said about it at all? A. No.

Q. Did she tell you how the property would become the Loughrans'? A. By operation of law.

Q. What do you mean by "operation of law"? A. All the interest that she took was under the will, and that on the determination of her life the fee would go to Sarah Loughran as the heir of Joseph F. Loughran. She was positive about that point and deplored the fact several times, and that it was rather unjust that she should be cut out with merely a life estate, and she so close with Joseph, and that his sister was so far away—almost like strangers, she said.

Redirect examination.

By Mr. SOHON:

Q. Did you ever hear her say that she had any money of her own that she had put into the lot or the building? A. No; she made no claim whatever to the house except under the will. At no time that I saw her or talked with her—and I talked with her whenever she desired me to do so—and she always claimed under the will and deplored the fact that she had no greater interest in it than the will gave her.

Q. Did she ever have any interest or estate other than the life interest in this property that you have heard of? A. Not that I ever heard of.

Recross-examination.

By Mr. TAYLOR:

Q. Is it not a fact that Mrs. Loughran at the time you spoke to her felt that her husband's will was the obligation that bound her in the matter of the property? A. At which time? I should
58 say that at any time that I spoke to her she felt that she was bound by the will, and that the only interest she had was under the will. Perhaps it would be argumentative, but I should say that she would not have asked me to ask the Loughrans in New York about buying other property if she had thought she had a greater interest than the will gave her.

Q. There is one thing I have overlooked and perhaps you have overlooked it also; did not Mr. Loughran own other property at the time of his death? A. Possibly he owned a piece of property at D street southeast.

Q. Was it not in reference to this that Mrs. Loughran asked you to see the Loughrans in New York? A. No; it was not, because there was a trust on that house, and my recollection is that she did not get anything out of it, anyhow, because the trust on it would wipe out everything on it. I think it was necessary to let that go by default. She could not pay the trust.

Q. When did she mention that property? A. At different times she spoke of that piece, but she seemed to relinquish all thought of it. She thought she might get a little out of it, but did not base much hope on it. It was the 15th Street house that she wanted to get and that she thought she ought to get.

Q. Did she speak to you about getting something out of the other house if she could arrange to have the trust continued or have a second trust placed upon it? A. No; she did not say anything about continuing the trust because it was idle to do so.

Q. Who advised her that it was idle? A. I presume she thought so. I did not advise her about it. But I did say to her to get the
15th Street house if possible or to sell it with the consent of
59 the people in New York. The principal thing was that she had to live in the 15th Street house. She had no means except some life insurance, but she did not want to move out of the 15th Street house so far as she was concerned financially. But the other side of it was so disagreeable, as she had seen all these people there for years, and it was unbearable; and she did not want to live there all the winter, for she said it would kill her; and she didn't.

Q. What sort of an arrangement did she suggest that you should make with the Loughrans? A. Generally, that if they would consent to allow the house on 15th street to be sold and use the proceeds in buying property somewhere else, one, two, or three small houses, in one of which she could live and rent the others and get some income out of it, and after her death it was to go all the same to the people in New York. It was merely a change of security, and she told me that if that could be done she would be satisfied—always having in her mind the getting away from this house on account of its associations.

Q. Do you know whether she wrote to the Loughrans? A. I wrote to them for her, and notified them of the death of Mr. Loughran and asked them to waive citation.

Q. Did she ever write to them? A. I don't know.

Redirect examination.

By Mr. SOHON:

Q. Was the conversation in which she asked you to arrange the matter with the Loughrans in New York before or after she was advised by Messrs. Taylor and Payne and Mr. Stargardter had come
into the matter? A. Before; I think May or June; and in
60 the following July, some time in the summer, she said she would put it in the hands of Messrs. Taylor and Payne, because they had some knowledge of it and she thought it would re-

lieve me of trouble, and that it would be better; so naturally I did not do anything more.

Q. Did she ever ask you after that to renew your efforts with the Loughrans? A. No, sir.

Cross-examination.

By Mr. TAYLOR:

Q. When was it that she told you she would place the case in our hands? A. I think in July or August of the year in which she died.

HARRY P. PARKER.

Subscribed and sworn to before me this 26 day of November, 1890.

GERALD VON CASTEEL,
Examiner in Chancery.

Mr. SOHON: I offer in evidence, to be marked Examiner's Exhibit No. 1, a certified copy of a deed from James E. Fitch to Joseph F. Loughran, dated January 21, 1874, and recorded February 10, 1874, in Liber 740, folio 391, of the land records of the District of Columbia, conveying the property described in the petition of Sarah Loughran; also,

To be marked Examiner's Exhibit No. 2, a certified copy of a deed dated December 11, 1875, and recorded February 8, 1877, in Liber 840, folio 376 *et seq.*, of the said land records, conveying said property from Joseph F. Loughran and Frances Marion Loughran, his wife, to Thomas J. Parker; also,

To be marked Examiner's Exhibit No. 3, a certified copy of a
61 deed dated September 22, 1882, and recorded September 25, 1882, in Liber 1016 of said land records, at folio 43 *et seq.*, whereby said Thomas J. Parker reconveyed said lot to said Joseph Loughran and Frances Marion Loughran, his wife; also,

To be marked Examiner's Exhibit No. 4, a certified copy of a deed dated October 21, 1882, recorded November 13, 1882, in Liber 1016, at folio 376 *et seq.*, of said land records, whereby said Joseph F. Loughran and Frances Marion Loughran, his wife, conveyed said lot and premises to Frederick R. Sparks and Stephen C. Hanson, trustee, to secure the payment of a note of $1,500 payable to the order of Thomas J. Parker, &c.; also,

To be marked Examiner's Exhibit No. 5, a certified copy of the last will and testament of Joseph F. Loughran, dated April 3, 1893, and probate thereto; also,

To be marked Examiner's Exhibit No. 6, a certified copy of the petition of Frances Marion Loughran for the probate of said will; and

To be marked Examiner's Exhibit No. 7, a certified copy of the order of the supreme court of the District of Columbia, holding a special term for orphans' court business, admitting the said will to probate; also,

To be marked Examiner's Exhibit No. 8, exemplification of letters of administration *d. b. n. c. t. a.*, granted by the supreme court of the District of Columbia, holding a special term for orphans' court business, to Sarah Loughran, petitioner.

62 EXAMINER'S EXHIBIT NO. 1.

James E. Fitch to Joseph F. Loughran. } Deed. Recorded Feb. 10, 1874, 10 a. m.

This indenture, made this twenty-first day of January in the year of our Lord one thousand eight hundred and seventy-four, between James E. Fitch of the city of Washington, District of Columbia, of the first part and Joseph F. Loughran of the same place, of the second part:

Witnesseth, that the said party of the first part for and in consideration of the sum of nine hundred and fifty dollars ($950.00) in lawful money of the United States to him in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released and conveyed, and doth by these presents grant, bargain, sell, alien, enfeoff, release and convey unto the said party of the second part, his heirs and assigns forever, all that certain piece or parcel of ground, situate, and lying in the city of Washington, District of Columbia, and known and described as lot numbered thirty-six (36) of a subdivision of square numbered one hundred and ninety-four (194) as the same is recorded in the office of the surveyor of the aforesaid city of Washington, said subdivision made by Columbian college, James Miller and Joseph Abbott, said lot having a frontage of twenty-three feet and nine inches (23 ft. 9 in.) on Fifteenth street west between Q street north and Samson street, with a depth of one hundred (100) feet and containing twenty-three hundred and seventy-five (2,375) square feet of ground more or less. Together with all the improvements, ways, easements, rights, privileges and appurtenances to the same belonging, or in anywise appertaining, and all the remainders,

63 reversions, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of the said party of the first part, of, in, to or out of the said piece or parcel of land and premises:

To have and to hold the said piece or parcel of land and premises, with the appurtenances unto the said party of the second part, his heirs and assigns, to his or their sole use, benefit and behoof forever. And the said party of the first part, for himself, his heirs, executors and administrators doth hereby covenant, promise and agree to and with the said party of the second part, his heirs and assigns: that he the said party of the first part and his heirs shall and will warrant and forever defend the said piece or parcel of land and premises with the appurtenances unto the said party of the second part, his

heirs and assigns from and against the claims of all persons claiming or to claim the same, or any part thereof, by, from, under or through him, them or either of them. And further, that the said party of the first part and his heirs, shall and will at any and at all times hereafter, upon the request, and at the cost of the said party of the second part, his heirs or assigns make and execute all such other deed or deeds, or other assurance in law for the more certain and effectual conveyance of the said piece or parcel of land and premises and appurtenances unto the said party of the second part, his heirs or assigns, as the said party of the second part, his heirs or assigns, or his or their counsel learned in the law shall advise, devise or require.

In testimony whereof, the said party of the first part has hereunto set his hand and seal on the day and year first hereinbefore written.

JAMES E. FITCH. [SEAL.]

Signed, sealed and delivered in the presence of—
E. F. M. FAEHTZ.

64 DISTRICT OF COLUMBIA, *County of Washington,* } *ss:*

I, E. F. M. Faehtz, a notary public in and for the county aforesaid, do hereby certify that James E. Fitch, of the city of Washington, District of Columbia, party to a certain deed bearing date on the twenty-first day of January, A. D. 1874, and hereto annexed, personally appeared before me in the county aforesaid, the said James E. Fitch being personally well known to me to be the person who executed the said deed and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this twenty-ninth day of January, A. D. 1874.

E. F. M. FAEHTZ.
[SEAL.] *Notary Public.*

DISTRICT OF COLUMBIA,
OFFICE OF THE RECORDER OF DEEDS, *September* 19, 1900.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber No. 740, fol. 391 *et seq.*, one of the land records of the District of Columbia.

GEO. F. SCHAYER,
Dep. Recorder of Deeds.

(10-cent I. R. stamp attached.)

65 EXAMINER'S EXHIBIT No. 2.

Joseph F. Loughran to Thomas J. Parker. } Deed. Recorded Feb. 8, 1877, 11 a. m.

This indenture, made this eleventh day of December, in the year of our Lord one thousand eight hundred and seventy-five, between Joseph F. Loughran and Francis Marion, his wife, of the city of Washington, District of Columbia, of the first part, and Thomas J. Parker of the same place, of the second part:

Witnesseth, that the said parties of the first part, for and in consideration of the sum of nine hundred and fifty ($950) dollars in lawful money of the United States, to them in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released and conveyed and do by these presents grant, bargain, sell, alien, enfeoff, release and convey unto the said party of the second part, his heirs and assigns forever: all that certain piece or parcel of ground, situate and lying in the city of Washington, District of Columbia, and known and described as lot numbered thirty-six (36) in a subdivision of square numbered one hundred and ninety-four (194) made by Columbian college, James Miller and Joseph Abbott, and recorded in the office of the surveyor of said city of Washington in Liber C. H. B. folio 189, said lot having a frontage of twenty-three (23) feet and nine (9) inches on 15th street west and running back with even width one hundred (100) feet and containing twenty-three hundred and seventy-five (2,375) square feet of ground more or less. Together with all the improvements, ways, easements, rights, privileges and appurtenances to the same belonging, or in anywise appertaining, and all the remainders, reversions, rents, issues and profits thereof, and all the estate, right, title, interest, claim and de-

66 mand whatsoever whether at law or in equity, of the said parties of the first part of, in, to or out of the said piece or parcel of land and premises.

To have and to hold the said piece or parcel of land and premises with the appurtenances unto the said party of the second part, his heirs and assigns, or the survivor of them his heirs and assigns, to and for their sole use, benefit and behoof forever. And the said Joseph F. Loughran and Francis Marion, his wife, parties of the first part for their heirs, executors and administrators, do hereby covenant, promise and agree to and with the said party of the second part, his heirs and assigns that they the said Joseph F. Loughran and Francis Marion his wife, and their heirs shall and will warrant and forever defend the said piece or parcel of land and premises with the appurtenances, unto the said party of the second part his heirs and assigns, from and against the claims of all persons claiming or to claim the same, or any part thereof, by, from,

under or through them or any of them. And further, that the said Joseph F. Loughran and Francis Marion his wife, and their heirs shall and will at any and at all times hereafter, upon the request, and at the cost of the said party of the second part, his heirs or assigns, make and execute all such other deed or deeds, or other assurance in law for the more certain and effectual conveyance of the said piece or parcel of land and premises and appurtenances unto the said party of the second part, his heirs or assigns, as the said party of the second part his heirs or assigns or his counsel learned in the law shall advise, devise or require.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

JOSEPH F. LOUGHRAN. [SEAL.]
FRANCIS MARION LOUGHRAN. [SEAL.]

Signed, sealed and delivered in the presence of—

A. S. TAYLOR.

67 DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, A. S. Taylor, a justice of the peace in and for the District & county aforesaid, do hereby certify that Joseph F. Loughran and Francis Marion, his wife, parties to a certain deed bearing date on the eleventh day of December, A. D. 1875, and hereto annexed, personally appeared before me in the county aforesaid, the said Joseph F. Loughran and Francis Marion, his wife, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Frances Marion Loughran, wife of Joseph F. Loughran, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and official seal this 11th day of Dec., A. D. 1875.

A. S. TAYLOR, *J. P.* [SEAL.]

DISTRICT OF COLUMBIA,
OFFICE OF THE RECORDER OF DEEDS, *September* 19, 1900.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber No. 840, folio 376 *et seq.*, one of the land records of the District of Columbia.

GEO. F. SCHAYER,
Dep. Recorder of Deeds.

(10-cent I. R. stamp attached.)

68 EXAMINER'S EXHIBIT NO. 3.

Thomas J. Parker to Joseph F. Loughran *et ux.* } Deed. Recorded September 25, 1882—9.30 a. m.

This indenture, made this 22nd day of September in the year of our Lord one thousand eight hundred and eighty-two between Thomas J. Parker of the city of Washington District of Columbia of the first part and Joseph F. Loughran and Francis Marion his wife of the second part,

Witnesseth, that the said party of the first part for and in consideration of the sum of four thousand dollars ($4,000.00) in lawful money of the United States to him in hand paid by the said parties of the second part at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged have granted, bargained, sold, aliened, enfeoffed, released and conveyed and does by these presents grant, bargain, sell, alien, enfeoff, release and convey unto the said parties of the second part their heirs and assigns forever all that certain piece or parcel of ground situate and lying in the city of Washington, District of Columbia, and known and described as lot numbered thirty-six (36) in a subdivision of square numbered one hundred and ninety-four (194) made by Columbian college, James Miller and Joseph Abbott and recorded in the office of the surveyor of said city of Washington in Liber C. H. B. folio 189 said lot having a frontage of twenty-three (23) feet and nine (9) inches on Fifteenth street west, and running back with even width one hundred (100) feet, aud containing twenty-three hundred and seventy-five (2,375) square feet of ground more or less, together with all the improvements, ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining

69 and all the remainders, reversions, rents, issues and profits therefor, and all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity of the said party of the first part of in to or out of the said piece or parcel of land and premises.

To have and to hold the said piece or parcel of land and premises with the appurtenances unto the said parties of the second part their heirs and assigns or the survivor of them his heirs and assigns to and for their sole use and benefit and behoof forever. And the said Thomas J. Parker party of the first part for his heirs executors and administrators does hereby covenant, promise and agree to and with the said parties of the second part their heirs and assigns that he the said Thomas J. Parker and his heirs shall and will warrant and forever defend the said piece or parcel of land and premises with the appurtenances unto the said parties of the second part their heirs and assigns from and against the claims of all persons claiming or to claim the same or any part thereof by from under or through them or any of them. And further that the said Thomas J. Parker

and his heirs shall and will at any and all times hereafter upon the request and at the cost of the said parties of the second part their heirs or assigns make, and execute all such other deed or deeds or other assurance in law for the more certain and effectual conveyance of the said piece or parcel of land and premises and appurtenances unto the said parties of the second part their heirs or assigns as the said parties of the second part their heirs or assigns or their counsel learned in the law shall advise devise or require.

In testimony whereof the said party of the first part has hereunto set his hand and seal on the day and year first hereinbefore written.

THOMAS J. PARKER. [SEAL.]

Signed sealed and delivered in the presence of, having first been duly stamped.

J. ALF. HAYWARD.
JOHN T. SIMS.

70 DISTRICT OF COLUMBIA, *ss:*

I, J. Alf. Hayward, a notary public in and for the District aforesaid, do hereby certify that Thomas J. Parker, party to a certain deed bearing date on the 22nd day of September, A. D. 1882, and hereto annexed, personally appeared before me in the District aforesaid, the said Thomas J. Parker proved by the *other* of a creditable witness to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this 22 day of September, A. D. 1882.

[SEAL.] J. ALF. HAYWARD,
Notary Public.

DISTRICT OF COLUMBIA,
OFFICE OF THE RECORDER OF DEEDS, *September* 19, 1900.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber No. 1016, fol. 43 *et seq.*, one of the land records of the District of Columbia.

GEO. F. SCHAYER,
Dep. Recorder of Deeds.

(10-cent I. R. stamp attached.)

EXAMINER'S EXHIBIT NO. 4.

Memorandum.

This exhibit is the same as exhibit filed with the petition of Sarah Loughran.

71 EXAMINER'S EXHIBIT No. 5.

The Last Will and Testament of Joseph F. Loughran, of Washington City, in the District of Columbia.

I, Joseph F. Loughran, now residing in the city of Washington in the District aforesaid, do hereby make, publish, pronounce, and declare this to be my last will and testament for the final disposition of all and singular the property that I may own in my own right at the time of my decease, as follows:

I give, bequeath and devise unto my wife, Frances Marion Loughran all my real estate wherever situated, to have and to hold the same for her own use, benefit and behoof, during her lifetime, the remainder at her death to go to my daughter, Mary B. Loughran.

I give, bequeath and devise unto my wife, Francis Marion Loughran all my personal and mixed property, to have and to hold the same to her own use, benefit and behoof, forever.

I herewith nominate and appoint my beloved wife to be the sole executrix, without bonds, of this my last will and testament.

In testimony whereof I have hereunto set my hand and seal this third day of April, A. D. 1893.

JOSEPH F. LOUGHRAN.

Signed, sealed, published, and declared by the above-named testator Joseph F. Loughran, as and for his last will and testament, in the presence of us, and each of us, who in his presence, and at his request, and in the presence of each other have hereunto subscribed our names as witnesses this third day of April, 1893.

C. J. MYERS.
WILLIAM SCHWENNECKER.
PETER PREUSS.

72 DISTRICT OF COLUMBIA, *To wit:*

On the 29th day of March, 1897, came Harry P. Parker and made oath on the Holy Evangels of Almighty God that he does not know of any will or codicil of Joseph F. Loughran, late of said District, deceased, other than the aforegoing instrument of writing, dated April 3rd, 1893, and that he received the same from Frances Marion Loughran since the testator's death, and said Joseph F. Loughran died on or about the 17th day of March, 1897.

H. P. PARKER.

Sworn to and subscribed before me—

[SEAL.] M. J. GRIFFITH,
Notary Public for the District of Columbia.

The Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

APRIL 9TH, 1897.

DISTRICT OF COLUMBIA, *To wit:*

This day appeared Clement J. Myers, William Schwennecker, and Peter Preuss, the subscribing witnesses to the foregoing last will and testament of Joseph F. Loughran, deceased, late of the District of Columbia, and severally made oath on the Holy Evangels of Almighty God that they did see the testator therein named sign this will; that he published, pronounced, and declared the same to be his last will and testament; that at the time of so doing he was, to the best of their apprehension, of sound and disposing mind, and capable of executing a valid deed or contract, and that their names as witnesses to the aforesaid will were signed in the presence and at the request of testator and in the presence of one another.

Test: J. NOTA McGILL,
Register of Wills.

73 EXAMINER'S EXHIBIT NO. 6.

Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

In re Estate of JOSEPH F. LOUGHRAN, Deceased.

To the honorable justice presiding:

The petition of Frances Marion Loughran respectfully represents:

1. That she is a citizen of the United States and a resident of the District of Columbia.

2. That Joseph F. Loughran, late a citizen of the United States and a resident of the District of Columbia, departed this life at Washington, D. C., on the 17th day of March, 1897.

3. That the decedent left a last will and testament bearing date the 3rd day of April, 1893, which is herewith presented for probate and record.

4. That he left him surviving a widow, the petitioner, and as next of kin only the persons whose names, residences, and relationship to the deceased are as follows: Sarah Loughran, a sister, and Thomas Loughran, a cousin, both adults residing in Brooklyn, N. Y.; the daughter, Mary B. Loughran, mentioned in said will, having died September 28, 1896.

5. That the said testator died possessed of the following goods, chattels, and personal estate, to wit, household furniture worth not more than three hundred dollars ($300) and a credit of $71.11 on account of salary as clerk in Surgeon General's Office, War Department, for 16 day's service (from March 1 to 16, both inclusive, 1897), at $1,600 per year, and no other personal estate of any kind.

74 6. That the said testator left no debts owning by him except those for funeral expenses and medical attendance, amounting to about $150.

7. Petitioner is the executrix named in the said will, which requests that no bond be required of her, and as such believes herself entitled to letters testamentary on said estate.

Wherefore she prays that said will be admitted to probat- and record and letters testamentary granted unto her accordingly.

FRANCES M. LOUGHRAN.

DISTRICT OF COLUMBIA, *To wit:*

I do solemnly swear that I have read the petition by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon my information and belief I believe to be true.

FRANCES M. LOUGHRAN.

Sworn and subscribed to before me this 31 day of March, A. D. 1897.

[SEAL.] J. ALF. HAYWARD,
Notary Public.

75 EXAMINER'S EXHIBIT NO. 7.

Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

In re Estate of JOSEPH F. LOUGHRAN, Deceased.

On consideration of the petition of Frances Marion Loughran, executrix of the last will of Joseph F. Loughran, deceased, and it appearing to the court that the will of said deceased, dated the 3d of April, 1893, has been duly filed, and the execution thereof proven by the oath of C. J. Myers, William Schwennecker, & Peter Preuss, subscribing witnesses thereto, and no objection having been signified to the court, it is adjudged and decreed that said will be, and the same is hereby, admitted to probate and record as a will of personalty, and that letters testamentary do issue to Frances Marion Loughran, the executrix by said will appointed, upon her giving bond in the penalty of two hundred dollars for the discharge of her duties as such.

A. B. HAGNER, *Justice.*

76 In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

DISTRICT OF COLUMBIA, *To wit:*

I, John R. Rouzer, acting register of wills for the District of Columbia and *ex officio* clerk of the said special term for orphans' court business, do hereby certify the foregoing to be a true copy of the original will of Joseph F. Loughran, deceased, and the probate thereto, filed and recorded in the office of the register of wills for the District of Columbia, aforesaid; also a true copy of the petition

of Frances M. Loughran and order of court admitting will to probate and record *In re* Estate of Joseph F. Loughran, deceased.

And I further certify that the said will after having been proven by the witnesses whose names appear in the foregoing probate was, by the order of the supreme court of the District of Columbia, holding a special term for orphans' court business, duly admitted to probate and record as a will of personalty on the 9th day of April, A. D. one thousand eight hundred and ninety-seven.

In testimony whereof I hereunto subscribe my name and affix the seal of the said supreme court, special term for orphans' court business, this 28th day of November, anno Domini 1900.

JOHN R. ROUZER,
Acting Register of Wills.

[SEAL.]

77 EXAMINER'S EXHIBIT No. 8.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

DISTRICT OF COLUMBIA, *To wit:*

The United States of America to all persons to whom these presents shall come, Greeting:

Know ye that on the 17th day of May, in the year of our Lord 1898, administration of all the goods, chattels, and credits of Joseph F. Loughran, late of the District of Columbia, deceased, was by the supreme court of the District of Columbia aforesaid granted and committed unto Sarah Loughran, who, as administratrix *d. b. n. c. t. a.* of said deceased, first executed a bond to the United States, with good sureties a*ff*roved by the said court in the penalty of seven hundred dollars, conditioned for the faithful performance of the trust in her reposed, she having taken the required oath, and whose appointment is unrevoked and still in force.

Witness, Alexander B. Hagner, justice holding the special term of the said supreme court for orphans' court business, this 20th day of May, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-second.

[SEAL.]

Teste: J. NOTA McGILL,
Register of Wills for the District of Columbia.

78 In the Supreme Court of the District of Columbia.

MARY C. LEMMON
vs.
FRANCES M. RICH ET AL. } Equity. No. 18924.

Stipulations of Counsel.

First. It is hereby stated, agreed, and stipulated by the solicitors for Sarah Loughran and for Mary C. Lemmon that there is now in

the hands of the receivers in this cause $3,238.02, which includes $136.42 rent collected from No. 1528 Fifteenth street northwest.

Second. That the petitioner, Sarah Loughran, is the administratrix *c. t. a. d. b. n.* of Joseph F. Loughran, deceased.

TAYLOR & PAYNE,
Sol'rs for Mary C. Lemmon.

79 *Order Granting Def't F. M. Rich Leave to Answer Petition.*

Filed June 12, 1901.

In the Supreme Court of the District of Columbia.

MARY C. LEMMON
vs.
FRANCES M. RICH. } In Equity. No. 18924.

On motion of the solicitor for defendant, Frances M. Rich, and after hearing counsel on both sides, it is, this 12th day of June, A. D. 1901, ordered that said defendant have leave to withdraw her election to stand upon her demurrer to the petition of Sarah Loughran, filed September 16th, 1898, and to file an answer to said petition forthwith, the testimony taken by said petitioner to stand as if taken after replication to said answer had been filed, said petitioner being granted leave to file such replication at this time.

By the court:

A. C. BRADLEY,
Asso. Justice.

80 *Answer of Frances M. Rich.*

Filed June 12, 1901.

In the Supreme Court of the District of Columbia.

MARY C. LEMMON
vs.
FRANCES M. RICH ET AL. } In Equity. No. 18924.

The separate answer of Frances M. Rich to the petition of Sarah Loughran, filed the 16th day of September, 1898.

1. This respondent admits the residence of the said Sarah Loughran as set forth in the first paragraph of her said petition, but she denies that the petitioner has any right or title to the rents or proceeds of sale of the real estate described in this proceeding.

2. This respondent admits that, under the decisions of this court, she claims a moiety of the proceeds of sale of the real estate described in these proceedings as a devisee under the will of Frances Marion Loughran, deceased, as is set forth in the second paragraph of the said petition.

3. This respondent admits the matters and things in the third

paragraph of the said petition contained, but alleges that the said property was purchased by Joseph F. Loughran and Frances Marion Loughran jointly, and a considerable portion of the purchase-money was paid by Mrs. Loughran with monies which she had in her own right and not derived from her husband. It was used as the home of her mother and brothers, and they contributed to all of the household expenses *pro rata*.

4. Respondent admits the conveyance in fee-simple of the
81 real estate in this proceeding described by the said Joseph F. Loughran and Frances Marion Loughran to Thomas J. Parker by deed bearing date on the 11th day of December, 1875, but she denies that at the time the said Joseph F. Loughran was indebted to the said Thomas J. Parker, and she further denies that the said deed was intended as security for any indebtedness of the said Joseph F. Loughran or Frances Marion Loughran, and she avers that the said conveyance was intended to vest the title to the said property in the said Thomas J. Parker, the said Frances Marion Loughran's brother.

5. This respondent admits that by deed dated September 23rd, 1882, and recorded September 25th, 1882, in Liber 1016, at folio 43 *et seq.*, of the land records of the District of Columbia, the said Thomas J. Parker conveyed the said real estate to the said Joseph F. Loughran and Frances Marion Loughran, his wife, their heirs and assigns, or the survivor of them, his heirs and assigns, to and for their sole use, benefit, and behoof forever, which said conveyance, the complainant avers, was made for the sole purpose of protecting the said Frances Marion Loughran's interest in the said property in the event of her surviving her husband by creating in the said Joseph F. Loughran and Frances Marion Loughran an estate by entireties, with survivorship.

6. This respondent admits the making of the deed of trust of October 31st, 1882, by the said Joseph F. Loughran to Frederick R. Sparks and Stephen C. Hanson, to secure to Thomas J. Parker the payment of an indebtedness of fifteen hundred dollars, and that Frances Marion Loughran joined in the execution of the said trust as the wife of the said Joseph F. Loughran. The complainant denies that the said joining in the execution of the said deed of trust by the said Frances Marion Loughran was intended to affect in any way her own moiety of interest, title, or estate in the said
82 property or her right of survivorship, and this respondent denies that the said deed of trust does convey the separate estate, title, or interest of the said Frances Marion Loughran in the said property.

Respondent further says that said deed of trust was merely security for a loan and did not in anywise affect the equitable interest of said Frances M. Loughran, because of the absence of any intention so to do and because of the peculiar nature of the estate by entireties, which cannot be destroyed by such provisions of a deed of trust as are relied on by the said petitioner.

7. This respondent admits the matters and things in the seventh paragraph of said petition contained.

8. This respondent denies that any interest or title, equitable or at law, has become vested in the said Sarah Loughran upon the death of the said Joseph F. Loughran or at any other time, as is claimed in the eighth paragraph of the said petition.

9. Answering the ninth paragraph of the said petition, this respondent says that it is not true that the said Frances Marion Loughran was informed that she was entitled to the property by effect of the conveyance from her brother, the said Thomas J. Parker, only three days before she made her said will; but, on the contrary, this respondent avers that Frances Marion Loughran was informed of the condition of her title a considerable time prior to the date of her said will, to wit, some time in July, 1867. This respondent also denies that the receivers have been authorized to sell the said real estate in consequence of any erroneous allegations or assumptions.

10. For answer to the allegatious of the tenth paragraph of the said petition, this respondent says that the said Sarah Loughran was not made a party to this cause, because she has no interest in
83 or title to the property described herein, and that no reason existed when this suit was instituted or now exists for her being a party thereto.

Further answering, this respondent says that the said petitioner has not in and by her said petition made or stated any such case as entitles her to the relief sought by her said petition, and this respondent claims the same benefit of this objection as if raised by demurrer.

FRANCES M. RICH.

I do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof; that the facts therein stated as of my personal knowledge are true, and those therein stated on information and belief I believe to be true.

FRANCES M. RICH.

Subscribed and sworn to before me this 7th day of June, A. D. 1901.

J. R. YOUNG, *Clerk*,
By J. WILMER LATIMER, *Ass't Cl'k.*

Decree Dismissing Petition of Sarah Loughran.

Filed June 12, 1901.

In the Supreme Court of the District of Columbia.

MARY C. LEMMON
vs.
FRANCES M. RICH. } In Equity. No. 18924.

This cause coming on to be heard on the petition of Sarah Loughran, filed herein September 16th, 1898, the answers thereto of Mary C. Lemmon and Frances M. Rich, and the depositions taken by the

petitioner, and all the other proceedings had under said petition having been argued by counsel on both sides, and considered
84 by the court, it is this 12th day of June, 1901, adjudged and ordered that the said petition be, and it is hereby, dismissed with costs.

From this order the petitioner Sarah Loughran prays an appeal to the Court of Appeals in open court; the penalty of the bond to be given by her to supersede this order shall be one hundred dollars, and she is hereby allowed to sever from the other parties to prosecute her appeal.

By the court:

A. C. BRADLEY,
Asso. Justice.

85 In the Supreme Court of the District of Columbia.

MARY C. LEMMON
vs.
FRANCES M. RICH ET AL. } No. 18924. In Equity.

The President of the United States to Mary C. Lemmon, complainant, and Frances M. Rich, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal entered in the supreme court of the District of Columbia on the 12th day of June, 1901, wherein Sarah Loughran, intervener, is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 17th day of June, in the year of our Lord one thousand nine hundred and one.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this — day of ——, 190–.

SAM. MADDOX,
JAS. H. TAYLOR,
Attorney for Appellee Lemmon.
JOHN RIDOUT,
For Appellees Represented by Me.

86 *Memorandum.*

1901, July 1.—Appeal bond filed.

Directions for Preparation of Record.

Filed July 24, 1901.

In the Supreme Court of the District of Columbia.

MARY C. LEMMON
vs.
FRANCES M. RICH ET AL. } Equity. No. 18924.

The clerk will please insert the following papers in the record for the appeal noted in the above-entitled cause:

1897, Dec. 30. Bill of complaint.
" " Answer of Frances M. Rich and John M. Rich.
1898, Jan. 4. Order appointing James H. Taylor and John Ridout receivers.
Mar. 9. Answer of Sparks and Hanson, trustees.
" " Sale of receivers, motion and petition for.
" 12. Answer of Frances M. Rich to above motion and petition.
Aug. 4. Amended bill allowed filed.
" 16. Sale of real estate, order for.
Sep. 2. " " " " receivers' report of.
" 16. Petition to intervene by Sarah Loughran.
" 20. Ratification of sale *nisi*.
87 Oct. 19. Stipulation for admission of Sarah Loughran as party.
" " Order " " " "
" 21. Sale confirmed.
1899, Feb. 1. Demurrer to petition of Sarah Loughran.
Aug. 26. " " " " "
Dec. 26. " " " " " overruled.
" 30. Answer to demurrer to petition of Sarah Loughran.
1900, July 19. Refusal of Frances M. Rich to plead further.
Nov. 26. Replication to answer to petition.
1901, Feb. 20. Deposition and exhibits filed by Sarah Loughran.
June 12. Leave to Frances M. Rich to answer.
" " Answer by " "
" " Decree dismissing petition of Sarah Loughran.
Appeal.
Citation, bond, etc.

H. W. SOHON,
Sol. for Sarah Loughran.

88 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 87, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, a copy of which is made a part of this record, in cause numbered 18924, in equity, wherein Mary C. Lemmon is complainant and Frances M. Rich and others are defendants, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, this 7th day of August, A. D. 1901.

JOHN R. YOUNG, *Clerk,*
By ALF. G. BUHRMAN, *Ass't Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1119. Sarah Loughran, intervener, appellant, *vs.* Mary C. Lemmon *et al.* Court of Appeals, District of Columbia. Filed Aug. 8, 1901. Robert Willett, clerk.

IN THE

Court of Appeals of the District of Columbia

OCTOBER TERM, 1901.

No. 1119.

SARAH LOUGHRAN, APPELLANT,

vs.

MARY C. LEMMON AND FRANCES M. RICH.

BRIEF FOR APPELLANT.

HENRY W. SOHON,
Solicitor for Sarah Loughran.

LAW REPORTER PRINT.

IN THE

Court of Appeals of the District of Columbia

OCTOBER TERM, 1901.

No. 1119.

SARAH LOUGHRAN, APPELLANT,

vs.

MARY C. LEMMON AND FRANCES M. RICH.

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

This case involves the construction and effect of a deed of trust wherein husband and wife, tenants by the entireties, or joint tenants, secured the payment of a certain promissory note therein mentioned, and further provided that the trustees should hold the premises therein described—

> "in trust to permit said Joseph F. Loughran (the husband), his heirs or assigns to occupy the said described premises and the rents, issues and profits thereof to take, have and apply to and for his and their sole use and benefit until default be made in the payment of said promissory note,"

and upon full payment thereof—

> "to release and reconvey the said described premises unto the said Joseph F. Loughran, his heirs or assigns at his or their cost,"

and upon default in such payment to sell said premises and pay said note, "and lastly to pay the remainder, if any, to

said Joseph F. Loughran, his heirs or assigns." The property was sold by receivers in this case and the promissory note mentioned was paid out of the proceeds.

The appellant, Sarah Loughran, is the only heir at law of said Joseph F. Loughran, and claims that under the provisions of said deed of trust the equity of redemption descended to her and the note being paid the property or its proceeds should be released to her. Frances Marion Loughran, the wife of Joseph F. Loughran, survived him and the appellees, her devisees, claim that she became entitled to said property by right of survivorship notwithstanding said deed of trust.

Joseph F. Loughran originally acquired the lot in 1874 (Examiner's Exhibit No. 1, Rec., p. 39), and later, in 1875 or 1876, he erected a house on it. Thomas J. Parker, his brother-in-law, advanced money to build the house, and in December, 1875, the title was placed in his name, Frances Marion Loughran joining her husband in the conveyance (Examiner's Exhibit No. 2, Rec., p. 41). In 1882 the indebtedness to Thomas J. Parker amounted to $1,500, and Joseph F. Loughran gave his note for the amount, payable in five years, without interest. Thomas J. Parker thereupon reconveyed the property to Joseph F. Loughran and Frances Marion, his wife (Examiner's Exhibit No. 3, Rec., p. 43), and they in turn executed the deed of trust to secure said note, wherein is contained said provisions respecting the equity of redemption (Rec., p. 20).

Joseph F. Loughran died March 17, 1897, leaving a will which was probated on the petition of his widow, who qualified as executrix thereunder, and by this will he devised his real estate to his wife for life and the remainder in fee to his daughter, who, however, died before his decease, whereby the appellant, his sister, became his only heir at law. The widow, Frances Marion Loughran, claimed a life estate in said real estate under this will. She regarded the property as her husband's and subject to said provisions of

his will. She frequently stated that she only had a life estate in the property. She stated that after her death it descended to Sarah Loughran, and she authorized negotiations with Sarah Loughran for a sale of the property and more advantageous investment of the proceeds for her own benefit for life and after her decease for the benefit of Sarah Loughran (Rec., pp. 31, 33, 34, 35, 36).

Frances Marion Loughran died November 9, 1897. A caveat was filed against her will and issues were framed to determine its validity. Pending the trial of these issues, the original bill in this case was filed praying the execution of the trust mentioned in said will and by consent of the complainant and defendants receivers were appointed to take charge of and manage said property as part of her estate under the direction of the court. By a further order, said receivers were directed to sell said real estate, adjudication of the rights of the parties being reserved for the future order of the court. The trustees under said deed of trust were made parties to said bill but said Sarah Loughran was not made a party. The receivers offered the property at auction and a bid of $4,500 was accepted and reported to the court.

Thereupon, Sarah Loughran, the appellant, filed her intervening petition (Rec., p. 16), claiming that said property belonged to her as heir at law of Joseph F. Loughran, but offering to abide by said sale provided she be made a party to the cause and be allowed to prosecute and have adjudicated in this cause her right to the proceeds of sale and accumulated rents. By stipulation of the parties and an order of the court (Rec., pp. 23, 24), she was made a defendant in the cause, her said petition to stand and be treated as her answer to the bill and also as a cross-bill to the end that all her rights claimed in said petition may be fully and finally adjudicated and protected in this cause. Said sale was thereupon finally confirmed.

The appellees then demurred to the intervening petition.

The demurrer was overruled (Rec., p. 26); testimony in support of the petition was taken; and upon final hearing the petition was dismissed (Rec., p. 51). From the decree dismissing her petition, Sarah Loughran noted this appeal in open court.

ASSIGNMENT OF ERROR.

The court below erred in dismissing the petition of Sarah Loughran.

I.

By the reservations in the deed of trust from Joseph F. Loughran and wife, dated October 31, 1882 (Rec., p. 20), the entire equity of redemption in the property became vested in Joseph F. Loughran. The rents and profits, until foreclosure, are given to him; in event of foreclosure, the balance of the proceeds of sale is to be paid to him; and in event the debt is paid, the property is to be released and reconveyed to him. In these reservations he is designated by name, and there is no room for construction.

There is no theory upon which the use and occupation of the property could have been denied to Joseph F. Loughran, his devisee or heir until foreclosure; nor could the trustees have refused to release the property to him on payment of the debt or have refused to pay him the surplus proceeds in event of a sale. These provisions cover every view of the beneficial interest in the property. They deprive the wife of every interest she might have had therein and vest the entire beneficial interest or equity of redemption in the husband just as comprehensively and effectually as though a series of conveyances had been executed for the purpose. Sarah Loughran, the husband's heir at law, being entitled to the equity of redemption, is now entitled to the funds in the hands of the receivers.

II.

The debt has been paid out of the proceeds of the property, but the trust impressed upon it by act of the parties follows it in its converted form of money; and the right of Joseph F. Loughran and his heirs to a release of the property can and should be satisfied by a release or surrender of the balance of its proceeds. The fact that the property has been sold by receivers of the court does not alter the right of the parties; the receivers paid the debt out of the proceeds just as Joseph F. Loughran or the trustees might have paid it. The debt being paid, the deed of trust declares what shall be done in such event, *i. e.*, the property shall be released to Joseph F. Loughran or his heirs. There can be no warrant for ignoring this plain language. The reservations are to Joseph F. Loughran in fee. They cover every contingency; there is no reason for ignoring them. They are plain. There is no opportunity for construction or evidence of mistake. The parties said what should be done with the property. The court has converted it, but the trust remains, and it should be executed completely as declared. Citations of authorities for this is unnecessary. No other question of law is involved. The only proposition seems to be, Shall the directions of the parties be respected?

III.

The contention of counsel for appellees that the equity of redemption may not go out of the mortgagors by force of provisions in the mortgage is untenable. Their quotation from section 1927 of Jones on Mortgages, while it states the proposition broadly, is not supported by any case. It would seem that a mortgagor has a right to designate a different destination for his equity of redemption than what the law would provide if he made no special designation. The right to thus contract in reference to property is a right incident to ownership. It contravenes no substantial

or technical rule of law. The doctrine that a mortgagor may not deprive himself of his equity of redemption is applicable only between mortgagor and mortgagee and is for the former's protection; it is to uphold his rights against a harsh mortgagee and has no application in other cases. In this case the special destination of the equity of redemption is to one of the grantors and is as much special as though made to a stranger to the deed. If the reservations were to a stranger would they be ignored?

Not any of the cases cited by Jones holds that the parties were incompetent to make a special destination for the equity. They are all cases wherein the controversy was between the heir and personal representative over a balance of proceeds of sale, where the sale was made after the death of the mortgagor and the reservation was to his executor or administrators or where the sale was made in his lifetime and the reservation was to his heirs. It is true that in these cases it has been held that the words "executors or administrators" and "heirs" do not always govern, but an inspection of these cases shows that the law does not undertake to give the deed a reformed or changed effect by substitution of "heirs" for "executors or administrators" or *vice versa*, nor does the law ignore these words however the loose language of commentators may seem to indicate it. In these cases it is simply held that the deed does not cover the contingency which has arisen and that the reservation of the balance of proceeds to the mortgagor's executor or administrator, is only applicable when the sale or conversion of the property occurred in his lifetime.

In the case of *In re* Thompson Estate, 6 Mackey, 542, cited by the appellees in the court below, the only reservation was to the mortgagor's executors or administrators, and the sale was made after his death. Mr. Justice Cox, in delivering the opinion of the court, said:

> "In this case the surplus is directed to be paid to the grantors, his executors, administrators and as-

> signs, which is correct if the sale is made in his lifetime and he should die before receipt of the money. But the case of his death before the sale, would make a different case, and is simply, as we think, not provided for in the deed, but is left to the operation of the law."

The entire line of cases is referred to in Dunning *vs.* Bank, 61 N. Y. 505, wherein the court says:

> "The true construction of these words is that the promise is to pay the executors or administrators whenever it might have been collected by the mortgagor, as, *e. g.*, where the land was sold in his lifetime."

These cases fail to show that the grantors can not make a different destination for the equity and they fail to show that the words used may be ignored, altered or reformed into something else. The words are not construed at all.

The course of the title and the nature of the transactions through which it passed, show that the appellant's contention accords with the understanding of all the parties respecting the title. On no other theory could the husband have claimed it and the wife have acquiesced and recognized Sarah Loughran's title. No violence will be done to the law and no one can claim an injury by giving to the transaction the effect the parties themselves contemplated.

It is respectfully submitted, therefore, that the decree below should be reversed with directions to order the payment of the fund in the hands of the receivers to Sarah Loughran.

HENRY W. SOHON,
Solicitor for Sarah Loughran.

IN THE

Court of Appeals, District of Columbia.

OCTOBER TERM, 1901.

No. 1119.

SARAH LOUGHRAN, APPELLANT,

vs.

MARY C. LEMMON AND FRANCES M. RICH.

ARGUMENT AND BRIEF IN BEHALF OF MISS MARY C. LEMMON, ONE OF THE APPELLEES.

SAM'L MADDOX,
TAYLOR & PAYNE,
Attorneys for Appellee Lemmon.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1100

IN THE

Court of Appeals, District of Columbia

OCTOBER TERM, 1901.

No. 1119.

SARAH LOUGHRAN, APPELLANT,

vs.

MARY C. LEMMON AND FRANCES M. RICH.

Argument and Brief in Behalf of Miss Mary C. Lemmon, one of the Appellees.

STATEMENT OF FACTS.

At some time prior to any disclosure of the record, Joseph F. Loughran married Frances Marion Parker. No children were born of the marriage. By a former marriage Loughran had one daughter, Mary B. Loughran, who died unmarried on the 28th day of September, 1896, in the lifetime of her father.

On the 21st of January, 1874, by deed of that date, lot 36, in square 194, in the city of Washington, was conveyed to Joseph F. Loughran for the stated consideration of $950. The money to pay for it was furnished by Thomas J. Parker, a brother of Mrs. Loughran.

Between the date of this conveyance and the Centennial—1874–1876—a house was built on this lot with money advanced by Thomas J. Parker. From the fact that the lot was conveyed to him by Loughran and wife in December, 1875 (R., p. 41), it would appear that Parker required the title to be put in his name either before the commencement of the building operations or prior to their completion.

The record does not show what sort of house was built on the lot or what it cost. It seems to have been of considerable size, for it accommodated, besides Loughran and his wife and his daughter, "her two brothers, Tom and Jim, and her two aunts, Miss King and Mrs. Miller, and Miss Lemmon," a cousin of Mrs. Loughran (R., p. 32). In September, 1898, more than twenty years after the house was built, and though much out of repair at the time, the property sold at auction for $4,500 (R., p. 25).

Thomas F. Parker paid one-half of the current family expenses, though the money he had put into the house and lot was never repaid (R., p. 32). On the 23d of September, 1882, Parker, by deed of that date, conveyed the property to "Joseph F. Loughran and Frances Marion Loughran, his wife," * * * "their heirs and assigns forever" * * * "to have and to hold the said piece or parcel of land and premises, with the appurtenances, unto the said parties of the second part, their heirs and assigns, or the survivor of them, his heirs and assigns, for their sole use and benefit and behoof forever" (R.. p. 43). About a month later and on the 31st day of October, 1882, Joseph F. Loughran and Frances Marion Loughran, his wife, executed a deed of trust, whereby the property was conveyed to Sparks and Hanson, trustees, to secure the payment of a note made by Loughran. The purpose for which this conveyance is made is thus set forth in the trust:

"Whereas the said Joseph F. Loughran is justly indebted unto Thomas J. Parker in the full sum of fifteen hundred ($1,500) dollars for which amount he has made, signed and

delivered unto the said Thomas J. Parker, payable to his order five (5) years after date his certain promissory note of even date herewith, in and for the aforesaid amount, without interest, and being desirous to secure the punctual payment of said note when and as the same shall become due and payable with all interest and costs due and accruing thereon as well as any renewals or extensions therefore executes these presents: Now, therefore, this indenture, witnesseth, that the said parties of the first part for and in consideration of the premises aforesaid," etc.

The trust further provides that until default made in the payment of the debt the trustees should permit Joseph F. Loughran to use and occupy the premises and take the rent; that when full payment of the debt was made the trustees should "release and reconvey" the property to Joseph F. Loughran, his heirs and assigns, and that if default is made in the payment of the said note, and the trustees sell the property at public auction, the surplus proceeds of sale should be paid to "Joseph F. Loughran, his heirs and assigns" (R., pp. 21, 22).

Loughran died on the 17th of March, 1897, having first made a last will, dated April 3, 1893, wherein he devises and bequeaths "all and singular the property I may own in my own right at the time of my decease as follows:

"I give, bequeath and devise unto my wife, Frances Marion Loughran, all my real estate wherever situated, to have and to hold the same for her own use, benefit and behoof, during her lifetime, the remainder at her death, to go to my daughter Mary B. Loughran.

"I give, bequeath and devise unto my wife, Frances Marion Loughran all my personal and mixed property, to have and to hold the same to her own use, benefit and behoof forever."

R., p. 45.

Mrs. Loughran died on the 9th day of November, 1897, leaving a last will and testament wherein she directs that "my house and lot numbered thirty-six (36), in square num-

bered one hundred and ninety-four (194)," shall be sold by her executor and the proceeds of sale, after payment of encumbrances and costs, equally divided between appellees Mary C. Lemmon and Frances Marion Rich (R., p. 5). At the time of her death she had in her possession the note of her husband before referred to, on which a balance remained due of nine hundred dollars ($900). One third of this, she says, was hers, and she gave it to her daughter, Mrs. Rich, one of the appellees. Stargardter, the executor named in the will, for some reason not disclosed, failed to qualify as such, and on the 30th of December, 1897, Mary C. Lemmon exhibited her bill in the supreme court of the District of Columbia asking that the lot be sold and the proceeds distributed under the direction of the court. Mrs. Rich answered the bill, and objected to the sale prayed, mainly on the ground of irregularity in the execution of Mrs. Loughran's will. On the incoming of this answer receivers were appointed to take and hold the property, subject to the order of the court.

On the 9th day of March, 1898, Miss Lemmon filed a petition in the cause, averring that the house was idle and was greatly in need of repair, and praying that the receivers be directed to make sale of it. Subsequently an amended bill was filed, making the administrator *d. b. n.* of Thomas J. Parker a party defendant as holder of the $1,500 note secured by deed of trust upon the property. On the 16th of August, 1898, a decree was passed directing the receivers to sell.

Shortly thereafter the property was sold at public auction for the sum of $4,500, and the sale was finally ratified on the 21st day of October, 1898. After paying the balance of $900 due on the $1,500 Parker note, and the expenses of sale and court costs, there remained of the proceeds in the hands of the receivers the sum of $3,238.02 for distribution.

In the meanwhile, and on the 16th day of September, 1898, Sarah Loughran filed a petition in the cause, averring

that she was the sister and sole heir-at-law of Joseph F. Loughran, and as such claimed the entire balance of sale proceeds in the receiver's hands, on the ground that the deed of trust to secure the $1,500 note to Parker (R., p. 20) so provided. She expressed a willingness to abide by the sale made by the receivers.

By an order passed on the 19th day of October, 1898, Sarah Loughran was admitted a party defendant in the cause, and by stipulation of counsel her petition was allowed to stand as and for an answer to the original bill, "and also as a cross-bill filed on her behalf."

Miss Lemmon answered the petition, controverting the claims of Sarah Loughran, and for the reason that the deed from Parker to Loughran and wife created a tenancy by the entireties, which was in no way affected by the deed of trust to secure the $1,500 note.

Issues were joined and proofs taken in behalf of Sarah Loughran. On final hearing in the court below her petition was dismissed, and from this order of dismissal the present appeal is prosecuted.

POINTS AND AUTHORITIES.

I.

THE DEED FROM PARKER TO LOUGHRAN AND WIFE CREATED A TENANCY BY THE ENTIRETIES.

Thomas J. Parker, the brother of Mrs. Loughran, seems to have been the only person connected with the family possessed of means. He paid for the lot, and although the title was put in the name of Loughran, he required it to be conveyed to him less than two years later. He paid for the dwelling-house erected on the lot, and the money expended for this purpose was never repaid to him. Several members of the family lived in the house, Parker paying one-

half of the current household expenses. Cordial relations seemed to have existed among them, otherwise Parker would not have paid for a lot and put the title in Loughran's name.

After thus living with them for six or seven years Parker made a voluntary deed (for the money he had paid for the house was never repaid) to his sister and her husband—that is, to Loughran and his wife—conveying the property to them, their heirs and assigns forever. These words, without more, would have created a tenancy by the entireties; but the deed goes further and says that the property shall inure to the benefit of the survivor. His purpose manifestly was to provide his sister with a home for her life, with a gratuity to the husband in case he survived.

Such a tenancy is, in legal construction, by reason of the unity of husband and wife, not strictly a joint tenancy, but a holding by one person. Husband and wife cannot take by moieties, but they are both seized of the entirety, and the survivor takes the whole; and during their joint lives neither of them can alien so as to bind the other. If the husband be attainted his attainder does not affect the right of the wife if she survives him; nor is such an estate so held by the husband and wife affected by the statutes of partition.

4 Kent's Commentaries, 362.

2 Blackstone Com., 181.

Hunt *vs.* Blackburn, 128 U. S. S. C., 464.

When the devise is to husband and wife they take by entireties, and not by moieties, and the husband alone cannot by his own conveyance, without joining his wife, divest the estate of the wife.

Doe *ex dem vs.* Parrot, 5 Term R., 652.

There can be no moieties between husband and wife. They cannot take separate estates under a conveyance to

both, but each has the entirety, and they are seized *per tout* and not *per my*. Nor could the husband therefore alienate or forfeit the estate—the whole of it belonging to his wife as well as himself; but upon his death the whole became hers absolutely.

Doe *ex dem*, &c., *vs.* Garrison, 1 Dana (Ky.), 37.

Difference between tenancy by entireties and joint tenancy well discussed in—

Rogers *vs.* Girder, 1 Dana (Ky.), 244.

The result of the British and American decisions is the same without an exception—that husband and wife take an indivisible estate, which continues, after the death of either natural person, the same estate in the survivor. Consequently the deed on which this controversy arises has the same legal effect as if it had been made by Deckard to Taul and wife, to hold to them, jointly and inseparably, during their joint lives, and, on the death of either, that the estate should go to the longest liver or his or her heirs forever.

Taul *vs.* Campbell, 7 Yerg., 337.

So indissoluble is this estate by entireties that it is not affected by a legislative enactment abolishing the right of survivorship in joint tenancies. The court say:

"Now, although these laws used the broadest terms, all joint tenants that be, or hereafter shall be, of estates of inheritance, &c., may be compelled to make partition, &c. yet it is most certain that they never have been supposed to reach the case of the lands given in fee (or for any lesser estate) to husband and wife; for all the books, from the oldest I have been able to examine, down to the present day, agree, *una voce*, in this: that husband and wife not only cannot compel each other to make partition, but that even if they concur in the wish, that they have not the power to sever the tenancy. It is a *sole* and not a *joint* tenancy. They have no moities. Each holds the entirety. They are

one in law and their estate one and indivisible. If the husband alien, if he suffer a recovery, if he be attainted, none of these will affect the right of the wife if she survive him. Nor is this by the *jus accrescendi*. There is no such thing between them. That takes place where, by the death of one joint tenant, the survivor receives an accession, something which he had not before, the right of the deceased. But husband and wife have the *whole* from the moment of the conveyance to them, and the death of either cannot give the survivor more."

Thornton *vs.* Thornton, 3 Rand., Va., 183.

Green, justice, concurring, said (p. 188):

"Nor could this interest be severed by any act of the husband or wife, or both of them. Such a conveyance to husband and wife had precisely the same effect in law, as if the land had been given to them, during the lives of both, and after the death of either, to the survivor alone."

In Maryland there are provisions in the code somewhat similar, and they have been similarly construed.

See Marbourg *vs.* Cole, 49 Md., 403.

Tenancy by the entireties exists in the District of Columbia, notwithstanding the married woman's act of 1869.

Carroll *vs.* Reidy, 5 D. C. App., 59.

Alsop *vs.* Federswisch, 9 Appeal Cases, 408.

II.

A TENANCY BY THE ENTIRETIES WILL NOT BE DESTROYED EXCEPT UPON THE CLEAREST PROOF THAT SUCH WAS THE INTENTION OF THE PARTIES.

As has been shown, the deed from Parker to Loughran and wife created a tenancy by the entireties. That it was so intended may well be assumed. A brother was providing his sister with a home as long as she lived, of which nothing could deprive her except her own voluntary act.

All of this appellant admits, but contends that the deed of trust of October 31, 1882, a voluntary act on the part of the wife, works a severancy of the tenancy, in that:

a. It reserves to the husband and his heirs permission to occupy the premises and collect the rents as profits until default made in the payment of the debt.

b. It provides for a release and reconveyance to the husband and his heirs after the payment of the debt.

c. It directs the trustees, in case of sale made as for default, to pay the surplus proceeds to the husband and his heirs and assigns.

All of the provisions are such as the printed forms of deeds of trust generally contain, blank spaces being usually left to be filled in with the name of the owner or owners of the property. In the great majority of cases this is but one person, and the fact that the husband's name only was inserted in the blank must be referred to inaccuracy or mistake rather than to a deliberate intent to sever the tenancy.

By taking the propositions of the appellant in the order in which they appear in the deed of trust—it will be remembered that at the date of this instrument husband and wife were living together in the house whereof each was seized *per tout*—the permission reserved to the husband to "use and occupy the said premises" is not at all inconsistent with the right left in the wife to demand similar privileges. The conveyance being merely a mortgage, both would have had that right, even without a special provision, until breach of condition.

The license to collect rent was to continue until default made in the payment of the debt secured, five years at the most. This short term cannot be successfully invoked as working a severance of a tenancy by the entireties. But the permission to collect rent was, after all, in this particular

case, a mere idle form of words, for there were none to collect, the premises having been continuously occupied by the owners from the day the deed of trust was executed to the end of their respective lives.

Appellant's 2d and 3rd proposition—the provisions for the release and disposition of surplus proceeds—will be treated together.

In the clause providing for a release there is no word or suggestion indicating an intent to change the course of the inheritance. The words actually employed are "release and reconvey" after the purposes of the conveyance have been accomplished by the payment of the debt, and they can only mean that thereafter the parties grantor shall hold as in their first and former estate. To effect a severance of the tenancy and terminate all interest of the wife in the property, some such words as "convey" or "confirm" should have been used.

The deed of trust is a contract between Loughran and wife, of the one part, and the trustees named, of the other. There is no suggestion that it embodies an agreement as between themselves that either could enforce. It therefore did not operate to divest the estate of either.

In Perry on Trusts this rule is thus stated in section 602:

"In law, a mortgage is considered, as between mortgagor and mortgagee, and so far as it is necessary to give full effect to the mortgage as a security for the performance of the condition, as a conveyance in fee. But for all other purposes it is considered, especially until entry for condition broken, as a *mere charge* or *encumbrance*, which does *not divest* the *estate* of the mortgagor. He is deemed seized so far that he can convey it subject to the mortgage, he may make a second mortgage, it may be attached for his debts:—he is considered as having all the rights and powers of an owner, except so far as it is necessary to hold otherwise in order to give effect to the mortgage. The interest of a mortgagor is therefore regarded as an estate, though in legal strictness and as against the mortgagor, it is an equity of redemption. It may be levied upon, and seizin delivered by

the officer, in which case the creditor will hold in fee, subject to the mortgage. The same principles apply to the *rights* and *title* of the grantor in *deeds* of *trust*," quoting—

White *vs.* Whitney, 3 Met., Mass., 81.
Harrison *vs.* Battle, 1 Devereux, Eq., 541.
Poole *vs.* Glover, 2 Iredell, Law, 129.
Anderson *vs.* Jenkins, 1 Jones, Law, 169.
McGregor *vs.* Hall, 3 Stewart & Porter, 397.
Keyser *vs.* Hitz, 4 Mackey, 179.

And in Kent, 4th Commentaries, 159:

"The equity doctrine is that the mortgage is a mere security for the debt, and only a chattel interest; and that until a decree of foreclosure the mortgagor continued the real owner of the fee."

"Although the mortgage be a legal title it is not the fee-simple absolute of the land, and language in a deed which might be sufficient to convey the latter, will nevertheless be construed as purporting to convey only the former if that intention is shown by recitals, or by anything within the four corners of the deed."

After reviewing the authorities, Mr. Justice James says:

"What is the legal result of this construction of the deed?" (That it is a mortgage.) "We think it is clear that the mortgagor, after receiving this reconveyance, stood just as he did before he executed the mortgage. He acquired thereby no title that he did not have before."

Walbridge *vs.* Hammack, 18 Dist. of Col. Rep'ts, 154.

In this case the debt secured was the debt of Loughran alone, and it was due and owing to Parker, the brother of Mrs. Loughran. The note probably represented money advanced by Parker to Loughran to buy the house on D street referred to by the witness Harry P. Parker (R., p. 37). Mrs. Loughran seems to have been a stranger to this title; wherefore in joining in the deed of trust, she acted simply as surety for her husband. In such case, no respect is to be paid to the loose expression touching a disposition of a possible surplus after payment of the mortgage debt:

"The principle that a wife, who joins her husband in a mortgage of her own property to secure his debts or the payment of money loaned to him, is surety merely to her husband, and is entitled to all the privileges and rights of a surety, is well settled by authority.

"Much stress has been laid upon the fact that, by the terms of the mortgage, the surplus is to be paid to the husband, after satisfaction of the mortgage debt, and not to the wife, or to them jointly, and it is claimed that this effectually repels all idea that she was, or intended to be, a surety. I do not consider the wording of this formal part of the mortgage as entitled to any great weight, one way or the other. That direction to the mortgagee in reference to the surplus can scarcely be construed into an agreement between husband and wife, by which the latter transfers or agrees to transfer her interest to him for the benefit of his creditors generally. The object of the mortgage was to secure the payment of the specific debt, and not to affect the right of the wife beyond that. This exception is well taken."

Vartie *vs.* Underwood, 18 Barb., 563.

In Indiana it has been held that a mortgage given by a wife in such case is void.

"The court (below) found specially that the debt evidenced by the note in suit was the separate debt of the husband, and that the wife was only surety; that the land described in the mortgage was held by the appellees by entireties, and that no part of the debt secured by the mortgage is the debt of the wife. * * *

"This being the husband's debt and the wife having signed the note and mortgage as surety only, the mortgage was void, and the court did not err in its conclusions of law upon the facts stated in the special finding." (S. 5119, R. S. Ind., 1881, provides that a married woman shall not enter into any contract of suretyship, and renders such contract void as to her.)

Wilson *vs.* Logue, 131 Ind., 191.

A mistaken notion on the part of the wife that she took the estate under her husband's will does not estop her to claim the whole property by right of survivorship.

Alsop *vs.* Fedarwisch, 9 App. D. C., 408.

The whole case is exhaustively considered along broad lines and decided against the contention of the appellant in the House of Lords case,

Jackson *vs.* Innes, 1 Bligh, 114,

where the following rules are promulgated:

"In a mortgage, the mere form of the reservation of the equity of redemption is not of itself sufficient to alter the previous title. In such a case (where fraud is out of the question) it is supposed to arise from inaccuracy or mistake, which is to be explained and corrected by the state of the title as it was before the mortgage. * * * So where the estate of the wife is mortgaged, and the equity of redemption is reserved to the heirs of the husband, there is a resulting trust for the wife and her heirs.

"The rule fixed by these cases is no more than this: where the equity of redemption is reserved to the husband, upon a mortgage of the wife's estate, and there is nothing more in the transaction, the courts hold that no alteration of the previous rights of the parties is intended. It must now be admitted as an established principle to be applied in deciding upon the effect of mortgages of this description, whether it be the estate of the wife, or the estate of the husband, if the wife joins in the conveyance, either because the estate belongs to her, or because she has a charge by way of jointure or dower, out of the estate, and there is a mere reservation in the proviso for the redemption of the mortgage, which would carry the estate from the person who was owner at the time of executing the mortgage, or where the words admit of any ambiguity, that there is a resulting trust for the benefit of the wife or for the benefit of the husband, according to the circumstances of the case.

"The facts material to be stated in this case are as follows:

"By a marriage settlement executed in 1743 certain lands were settled to the use of Richard Jackson, the husband, for life; remainder to Anne, his intended wife, for life; remainder to the children, male and female, of the marriage in strict settlement; remainder to the use of Anne, her heirs and assigns; and the deed contained a proviso enabling Richard Jackson and Anne, his intended wife, by deed, &c., to revoke the uses and to limit other uses to other persons and for any estates. In the year 1745 the husband and wife bor-

rowed £200, and to secure the payment by indenture demised the lands to John Childs, as mortgagee for the term of 1,000 years, with a proviso of redemption by Richard Jackson and Anne, his wife, or either of them, their or either of their heirs, &c., and in case of such redemption, that the term and estate thereby granted should determine. This latter instrument, it is to be observed, could only have effect under the power of revocation contained in the settlement, and it operated merely to create a mortgage term, subject to redemption. It is clearly no more than a charge upon the estate, redeemable by Jackson, his wife and their heirs, &c., and it did not alter the limitations of the settlement farther than was necessary to create the charge upon the estate; it was therefore, not redeemable by the heirs of the survivor, but only by those who were entitled under the settlement.

"Jackson and his wife then borrowed £400 and secured it by mortgage and fine for the use of the mortgagee, and remainder to Jackson and his wife, the survivor of them and then to the heirs of their bodies, and in default of such heirs of the survivor forever.

"It is to be observed, that the proviso for redemption, which was contained in the first mortgage, to Richard Jackson and Anne his wife, or either of them, their or either of their heirs, was by the second mortgage and new limitation discharged, and in this latter instrument the proviso was simply, if Richard Jackson and Anne should pay, that the said first mortgage should cease, determine and be void. The effect therefore of the second deed is to confirm a term of years, which should cease upon payment of the money borrowed, and after the determination of the term, the lands are settled to specific uses."

This is a case of great importance as a precedent. Comments upon Ruscombe *vs.* Hare, 6 Dow, 1, where, however, fraud was alleged in obtaining limitation to the husband being survivor.

"The CHANCELLOR: I conceive it to have been the opinion of Lord Thurlow, that in order to dispose of the equity of redemption of the wife in an estate, it is absolutely necessary that there should be in the recitals of the instrument, some expression that the parties meant it so: that it

was not enough to collect the intention from the limitations: but there must be something more upon the face of the deed to lead the wife to understand what those limitations were."

In Ruscombe *vs.* Hare, 6 Dow, 1, the whole doctrine of the reservation of the equity of redemption to the husband is discussed by Lord Eldon, who appears to have rendered the decision below in Cooth *vs.* Jackson (afterwards reported as Jackson *vs.* Innes, in the House of Lords). Lord Eldon says in the present case:

"I perfectly recollect the words which fell from the lips of Lord Thurlow, though it is a quarter of a century ago, upon that point, that when the equity of redemption is in these cases reserved to the husband, if there is no other evidence of the intention, and if the recital shows that the instrument was framed for other purposes, the husband is seized of the estate which he before had, with this difference, that if he before had the legal estate *jure uxoris*, he afterward had the equity of redemption, but still *jure uxoris* * * * and that equity throws the protection around the wife, that the deed shall operate no farther than its particular purpose. * * * The decree in this case was right in so far as it declared that the heir-at-law of the wife, whose estate had been mortgaged, was entitled to the equity of redemption, although it had been reserved to the husband and his heirs. Here there is no recital, no special circumstance, from which it may be concluded that the real intention was to make a new settlement of the estate, * * * nor any such special circumstances such as those in the case of Jackson *vs.* Innes" (which circumstances Lord Eldon thought warranted his deciding against the operation of the rule when the case was before him as Cooth *vs.* Jackson, in the court of chancery, but which decision was reversed by the House of Lords).

The older cases of Cotton *vs.* Cotton, 2d Rep. of Cases in Chanc., p. 72, and Broad *vs.* Broad, 2 Chanc. Cases, 161, are examined, commented upon, and approved in the foregoing cases of Ruscombe *vs.* Hare and Jackson *vs.* Innes.

In this case we have more than a mere reservation of an

equity of redemption. We have the avowed purpose of the trust, clearly stated, to be a desire "to secure the punctual payment of said note when and as the same shall become due and payable with all interest and costs due and accruing thereon as well as any renewals or extensions therefore executes these presents; now therefore this indenture witnesseth that the said parties of the first part for and in consideration of the premises aforesaid."

A case somewhat similar was decided by the court in general term in Thompson's case, 6 Mack., 536:

"Thompson owned a lot and conveyed it to trustees to secure the payment of a debt due by him. 'The deed of trust was in the ordinary form.' * * * After executing that, the fee-simple, subject to this deed, remained in him. He died intestate and it necessarily descended to his heirs-at-law and became their property; and the natural conclusions would be that if it was sold under the deed of trust, it was sold as their property and the surplus proceeds would come back to them. The only reliance of the widow is the concluding words in which the trustees are directed to pay over any residue 'to said Richard L. Thompson, his executors, administrators or assigns,' instead of 'heirs, executors, etc.' which is the usual form. * * * Now this final direction in the deed to pay over the surplus is perfectly needless. The law supplies the duty of trustees under such circumstances." * * *

"The fair interpretation of these inaccurate and often inadvertent expressions would seem to be that they are intended to express just what the law would ordain. In this case the surplus is directed to be paid to the grantor, his executors, administrators, and assigns, which is correct if the sale is made in his lifetime and he should die before receipt of the money. But the case of his death before the sale would make a different case, and is simply, as we think, not provided for in the deed, but is left to the operation of the law.

"The property having become the property of the heirs by descent, they are entitled to the surplus proceeds of sale. It appears to us that that is perfectly clear law, and it was so ruled in Wright *vs.* Rose, 2 Sim. & Stu., 323."

If the direction to pay surplus proceeds to "executors, administrators, and assigns" cannot prevail over the right of the heir-at-law, how can a similar direction to pay such proceeds to the "heirs or assigns" change the course of the title in a tenancy by the entireties?

Neither of the contingencies specified in the deed of trust for severing the tenancy by the entireties, as is claimed, happened in the lifetime of Joseph F. Loughran. Upon his death the rights of the wife resulting from survivorship attached and became paramount, and could not afterwards be taken away by any act of the trustees or of the receivers in this cause.

III.

BUT IF THE DEED OF TRUST CHANGED THE COURSE OF THE INHERITANCE QUOAD THE SURPLUS PROCEEDS OF SALE, THEN AN EQUITABLE CONVERSION RESULTED, AND THOSE PROCEEDS WENT TO MRS. LOUGHRAN UNDER HER HUSBAND'S WILL.

This principle has been established in a number of cases, some of which will be noticed.

In Paisley *vs.* Holzshu, 83 Md., 325:

Syl.—A grantor conveyed certain property to his three sons, to hold the same in trust for himself during life, with power after his death to divide the same among said children and other persons according to certain directions. In order to accomplish the purpose of the deed, a conversion of the realty thereby conveyed was necessary. A judgment creditor of one of the grantor's sons and beneficiaries issued an execution under which his interest in certain land conveyed by the deed was sold to the plaintiff. Before this execution sale, and after the death of the grantor, the trustees, acting under a power in the deed, sold the same land to the defendant. In an action of ejectment, *held* that the judgment debtor's interest in the land was only equitable, which could not support an action of eject-

ment, and also that the land had been converted into money under the provisions of the deed of trust.

ROBERTS, *J.* (p. 330):

"If by express language or by a reasonable construction of all its terms, the instrument shows an intention that the original form of the property shall be changed, then a conversion necessarily takes place."

Smithers *vs.* Hooper, 23 Md., 273.
Hurt *vs.* Fisher, 1 H. & G., 88.
Rieff *vs.* Strite, 54 Md., 301.
Church, &c., *vs.* Smith, 56 Md., 362.
Thomas *vs.* Wood, 1 Md. Ch., 298.
Earlom *vs.* Saunders, Amb. Am., 241.
Johnson *vs.* Arnold, 1 Ves. Sr., 169.
Hereford *vs.* Ravenhill, 5 Bead., 51.
Cowley *vs.* Hartstonge, 1 Dow., 361.

"Whenever the trustees are clothed with a discretion, and exercise it, and thus actually make a conversion, as was done in this case, the property will in general pass in the nature to which they have converted it."

Bourne *vs.* Bourne, 2 Hare, 35.
In re Ibbittson's Estate, L. R., 7 Eq., 226.
Rich *vs.* Whitfield, L. R., 2 Eq., 583.
Lawrence *vs.* Elliott, 3 Redf., 235.
Van Vetchen *vs.* Keator, 63 N. Y., 52.
White *vs.* Howard, 46 N. Y., 144.

In Hunter *vs.* Anderson, 152 Pa. St., 386:

Syl.—Where an agreement provides that trustees shall purchase land for the use of the *cestui que trust*, and hold and sell the same as early as practicable for the purpose of converting the same into money, and of paying over the proceeds to the *cestui que trust* in proportion to the several and respective interests, such agreement works a conversion of the land purchased. Consequently a purchaser from the trustee takes the land free from liens against the *cestui que trust* and unaffected by the dower of their wives.

Chief Justice PAXTON (p. 389):

* * * "The effect of this agreement was to place the title of the real estate when purchased in the trustees named therein for the purpose of sale, and distribution of the proceeds thereof in money to and among the parties entitled thereto. We think this was a conversion, and that the property in question was not bound by the lien of judgments against any of the beneficial parties. The principle that a direction to sell land works a conversion is so well settled that it is almost needless to cite authority. It is sufficient to refer to Jones *vs.* Caldwell, 97 Pa. St., 43."

Zane *vs.* Sawtell *et al.*, 11 W. Va., 43:

Syl.—Husband and wife convey land to a trustee in trust to sell the same and pay to the husband out of the purchase-money a certain sum and pay the balance of the purchase-money to the wife as her separate property. *Held,*

1. This is a conversion of the land into personalty.
2. A subsequent conveyance by the husband of all his right, title and interest in and to this land is valid to convey his right to so much of the purchase-money of this land, when it shall be sold by the trustee, as by the first deed the husband was entitled to.

GREEN, *J.* (p. 47):

"The only question involved in this cause is the true construction of the deed of April 23, 1874, whereby James W. Zane, the appellant, conveyed to Gilbert G. Sawtell, the appellee, with special warranty of title, 'all the right, title, and interest of the said James W. Zane, in and to a certain parcel of land' specifically described. This land included in its boundaries 21 lots, which on April 14, 1874, had been conveyed by James W. Zane and Caroline V. Zane, his wife, to Theodore Frik, 'in trust that he should sell and dispose of said lots as occasion might fairly offer, and when he shall sell any one of them, he shall pay to said James W. Zane, out of the first money $100, and the remainder of the purchase-money less a reasonable commission shall be paid to Caroline V. Zane as her separate property.' The appellee Gilbert G. Sawtell, contends that by the deed to him James

W. Zane conveyed or assigned to him his claim for $100 for each lot, as the same might from time to time be sold by the trustee, and on the other hand the appellant contends that he had no right, title or interest in or to those 21 lots, but only a personal demand upon the trustee for $100 on each lot he sold, when and as they were sold, and that this demand did not pass from Sawtell to him.

"Unquestionably the deed of James W. Zane and wife, in the view of a court of equity, impressed on these twenty-one lots the character of personalty, and that upon his death his interest in these lots would have passed to his personal representatives as personalty and not to his heirs as realty. This is a sequence of the familiar principle that a court of equity regards lands deeded or devised to be sold and converted into money, or money either articled or bequeathed to be invested in land, as having the character of property into which it is to be converted, though the actual conversion by sale or purchase, as the case may be, has not been actually effected." (Citing many cases.)

Siter *vs.* McClanachan, 2 Gratt., 280:

Syl.—Husband and wife convey the equity of redemption in land belonging to the wife to a trustee in trust to sell the same for the use and benefit of the grantors; *Held,*

1. This is a conversion of the land into personalty.
2. The husband may, in the lifetime of the wife, dispose of the trust property.
3. The husband surviving the wife, the whole trust property remaining, whether it be the land unsold, or the proceeds of the land, belongs to the husband; and her heir-at-law has no interest therein.

* * * * * * *

BALDWIN, *J.* (p. 293):

"The merits of this cause turn upon the force and effect of the deed of 3rd of March, 1831, by which the defendant, Gantt, and his wife conveyed to the defendant Kennedy certain real estate of which the wife was the fee-simple owner. * * * The effect of this deed was, in contemplation of a court of equity, to convert the property thereby conveyed from realty into personalty. * * * In this case the purposes of the conveyance to the trustee are de-

clared to be, that he may sell the lands for the best price he can get therefor, for the use and benefit of the party of the first part (meaning the grantors) and to enable him the trustee to make good and sufficient deeds to the purchaser or purchasers. The obvious intent of the instrument was to divest the title of the *feme* and vest it in the trustee, in order to effect sales of the property, from time to time, and place the proceeds at the disposal of the grantors. The subject of the deed was thus converted from realty into personalty, and in its new character the equitable right to it was conferred upon the husband and wife jointly. The husband thereby acquired the power to alien or encumber it without the concurrence of the wife, and in the event (which has happened) of his surviving her the whole interest, so far as undisposed of by him, became his absolute property. This is unquestionable upon principle, and the case of Collingwood *vs.* Wallis, 1 Eq. Cas. Abr., 395, is directly in point as regards the right of the surviving husband.

"In that case, husband and wife, with intent to raise money to pay husband's debts, and other debts charged on the wife's estate, by lease and release and fine, conveyed wife's real estate to trustees, to sell and dispose thereof for payment of the debts; and any balance in the trustees' hands to be paid to the husband and wife, as they should by writing direct or appoint. The trustees sold all the lands, except two farms in A, and paid all the debts. The wife died in the lifetime of the husband, leaving a daughter, issue of the marriage. The husband devises his lands in A to his brother, leaving no other lands but the two farms, which remained unsold after his death; and bequeathed to his bastard children a surplus of money from the sales which had been made; thus disinheriting the legitimate daughter of himself and wife, who claimed the two farms as heir of her mother.

"The Lord Chancellor decreed the trustees to convey the unsold lands to the devisee of the husband, saying that the trustees having the power to sell the whole, it must be considered in equity as if actually sold, in which case the money would go to the husband; and so must the land too, else it would be in the power of the trustees to make it land or make it money at their pleasure, and so give it to whom they should think fit; but the intention appearing (from

the nature of the case) that the residue should go to the husband and the wife and the survivor of them, it must go accordingly, whether land or money.

"In the case before us, the conversion of the subject from realty into personalty, is precisive against the pretension of the defendant, Norbone Beall Gantt, claiming as the heir-at-law of Mrs. Gantt, his mother. The chancellor supposes there was an equity of redemption in Mrs. Gantt, which descended to her heir; but this, it seems to me, cannot be so. The whole of her right, title and interest in the subject was divested by the deed to the trustee, and the change thereby effected in the character of the property, which has passed to her surviving husband and those entitled under him, to the total exclusion of her representatives.

"The only possible ground upon which the claim of Mrs. Gantt's heir could be sustained, is a reconversion of the property from personalty into realty by the exercise of some election (of course made subsequent to the deeds of March 31) to hold the subject as land instead of money.

* * * * * *

"If the giving of the incumbrance to secure a debt of the husband * * * could be considered an election to hold it as land instead of money, still the election would not be that of the wife, who during the coverture had no power to so elect. The election would be that of the husband, he having complete control and dominion over the subject, and would enure to his sole benefit, unless shown to have been made for himself and his wife jointly; and in that case the result would be, not a remitter of the wife to her former estate in the land, but a transmutation of their joint interest in the personalty to a joint estate in the realty. They would thus be constituted joint owners of the land, but not joint tenants; and the estate would devolve upon the survivor, for each would have the entirety, and there could be no partition between them."

Whatever right, therefore, the husband had to any surplus proceeds of sale was in the nature of personalty, and went to Mrs. Loughran under his will.

But we do not place our contention on these technical grounds alone. We stand on the broad principle that the deed of trust was intended by the parties merely as a security for the payment of Loughran's debt, and as such cannot avail to sever the tenancy of husband and wife, or prevent the survivorship rights from attaching.

The judgment of the court below should, therefore, be affirmed.

Respectfully submitted.

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